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ESSAY
ON THE
FORMS
OF
WRITINGS,
OR OF
SECURITIES and CONVEYANCES,
BOTH OF
HERITABLE and MOVEABLE SUBJECTS,
AS THEY ARE USED IN
SCOTLAND,

And the LAW itself as applicable to their nature, and the use
of them in general practice;

FOR
The common People, and Beginners in the Study of the Law;

WITH
An Appendix, on Personal and Real Execution for debts
the Form of Process before the Sheriff Courts, &c.

AND
A Short Dictionary of Law-terms ordinarily used in Scotland.

P E R T H :

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David Ramsay
Dundee

P R E F A C E.

THE professed design of the following Essay is, to be an introduction of the common people, and beginners in the study of the Law, into the knowledge of writings, or of securities and conveyances, used in the practice of the Law of Scotland, with the Law itself relative thereto. It is written in a simple form, and uses no more words in general, than are necessary; and therefore it is hoped, that it will answer the purpose intended. Those who have been bred regularly to the knowledge of the Law, and are in the daily practice of it, cannot expect to find any thing extraordinary in this Essay; but the time was with each of them, when such a book might have been of use to them; and they will not forget the steps by which they ascended to the top.

The book is divided into Two Parts, beside an Appendix and Dictionary. The First Part contains the forms of writings on heritable subjects, as land, and others of that nature; and the Second Part comprises the writings on moveables. The Appendix contains several things useful in practice; as on personal and real execution

cution for debt, the form of process before the sheriff court, the law concerning exchange and sale, &c. And the Dictionary contains the most of the ordinary terms used in the law, so explained, it is hoped, as to give the meaning of them to the common people. Latin and Latin phrases are avoided, as neither necessary by the law, nor useful in such writings, to the lieges. Especially the low and barbarous Latin, which is frequently used in law writings. No man regards the Latin language more than the Editor, but he would have it learned and practised to better purpose, than it is in the securities and conveyances of Law in Scotland. If it is required that students or practitioners in the law, understand good Latin, it will be a valuable exercise, to cause them to compose the whole forms of writings, in the English language, in the most elegant and expressive manner; and then to turn them all into the best Latin, *more Romano*. This will serve the purpose of learning both the English and Latin to good effect; whereas the present practice is greatly deficient in both these respects.

It might also be laid down for a rule, to have the public notaries examined thoroughly in the knowledge of both languages, when they are admitted to the office.

The Editor has not given examples of those writings,

writings, which are necessarily, at least commonly done at public offices, and by public notaries; save in a few cases, to give some idea of the matter; because it would be foreign from the present purpose. Among the writings he has omitted, he reckons charters from the crown, hornings, and other writs which pass the signet at Edinburgh; claims for serving persons heirs to their ancestors; summonses of cognition and recognition on houses, and summonses of adjudication of ruinous houses in boroughs, &c.

As to the use of many words, or few, in deeds; the law does not, and from the nature of things can not, appoint any rule on this head. And the Editor is of opinion, that words ought not to be idle, but operative; and they ought never to be used, or reckoned on, according to their number, but according to their sense and value. And if this be duly considered, fewer words will, in his apprehension, be used on many occasions, than are often done. But different writers have various inclinations in this respect, and where the sense is conveyed in clear terms, they may be indulged a little, either in brevity, or prolixity, according to their humour. Provided only that their employers do not suffer by either method.

The Editor however, has seen some clerks so attached to mere form, and so fond of the forms
of

of their own offices, as to find serious fault with those who differed from them, and followed the more general, and genteel printed models for writing. He has observed others, with so good an opinion of the multitude of words, and redundancies of style, as to call that manner, florid expression. What would Cicero have said, or what can any one of polite literature say, on hearing the name of florid expression, applied to compositions and expressions, which are the dullest among the dull?

He shall only farther observe on this head, that in conveyances of land, this form of expression, ‘ I have sold, annailied and disponed, and do hereby sell, annailie and dispone, from me and my heirs and successors, to and in favour of such a person, and his heirs, and assignees whomsoever,’ has no more effect, or security, than these few words. ‘ I hereby sell and dispone to such person, and his heirs.’

And in the conveyance of moveables, the form, ‘ I have made and constituted, and do hereby make and constitute such a man, and his heirs, executors, or assignees, my lawful cessionaries and assignees, in and to such a sum,’ means no more than this, ‘ I hereby cede and assign to such a person, the money.’ And so forth as to many other clauses and forms of expression.

Then, as to the manner of mentioning money,

it

it surely is not commendable, and it tends to no good purpose, to keep up a distinction, between sterling, or British money, and Scots; as there is but one legal standard, and one sort of money since the union, through all the kingdom. It is much better to reckon always in British money, and to express it so in writings. The Editor has generally mentioned, lawful money, when he had occasion to refer to this subject at all. The manner of expressing this in England, is, lawful money of Great Britain. But the place where the deed is executed, always points out the sort of money which is used, and must be paid.

As to technical terms, or terms of art on the subject in hand, the Editor is sensible, that every art has its jargon; but such terms may be often avoided, without any prejudice to the subject; and the more general and known language be made use of, to very good purpose. For instance, to dispose of, may be used for dispoise. Warranty, for warrandice. To decree, for, to decern. A decree, for, decreet. Allegation, for, alledgeance. The expressions, we undersubscribing, for, we subscribing, and growing timber, for, growing wood, and the like, often used in contracts, are beyond all rule of propriety both in Scotland and England; and they should be left off.

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The Editor does not suppose but there are faults and omissions in this Essay, and he is willing to hear every thing on this head, which is candidly pointed out to him, and to amend it. He gives the book to the public, only as what may be useful among the common people, and to beginners in the study of the law; and as an introduction to more perfect works on the subject. But he frankly acknowledges, he has not met with so much matter, which he deems useful on the subject, in any one book, or for double the price.

August, 1786.

I. M.

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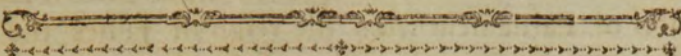
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INTRODUCTION.

On the LAW of SCOTLAND in general.

IF we set aside mere words, and every thing unnecessary in the science of the law of Scotland, and take only what is essential, the knowledge of the principles of that law will be acquired with more ease and expedition than we commonly imagine.

The will of God, the one lawgiver of the universe, is the supreme rule of action to his dependent creature, man. This will is known, by being written in the heart of man at his creation, and suggesting itself thro' all his life, concerning good and evil. It is called the law of nature. It is a rule, just, certain, clear, constant and obligatory; yielding satisfaction to the observers of it, and remorse of conscience, or inward anguish to the transgressors. By this law, man should regulate his duty to God, to himself, and to his neighbour.

Subordinate to this divine law, and not inconsistent with it, ought all human laws to be, and in particular the law of Scotland, which is defined, the command of the King and Parliament to the lieges, to do, or not to do, the thing mentioned; under a penalty.

The law of Scotland, comprehends the written law, or acts of Parliament from the reign of James the I. in the year 1424, to the union of Scotland with England in the year 1707, printed in 3 vols. 12mo; and the British statutes relating to Scotland since the union. Also the acts of sederunt, or ordinances of the court of Session for regulating the form of procedure before that court, in order to the speedy expedition of Justice, on the authority of the act of Parliament in the year 1540, c. 693.

The acts of Parliament are now held to be binding from the time they mention, without any real notification to the lieges in general; and no excuse of ignorance in transgressing them, by the most ignorant and illiterate person, is admitted in a court of law. But the wisdom and humanity of this practice, are not evident. The means of knowledge in the law, are withheld, or made so very dear and difficult to the common people, that they cannot know this statute law, yet they are held as really and easily possessed of that knowledge. The legislature of Britain do not intend to ensnare the people by the multiplicity, verbosity, and dearness of their acts, but there is some neglect or inattention, by not publishing those acts to the people in an easy, clear manner, so as they may really know them, and be without excuse. This might be remedied by abridging the whole law to the necessary points, and selling the same at a small price.

The law of Scotland also comprehends the general and particular customs established through the country:
called

called the unwritten law, because the beginning thereof is not in writing by authority, like an act of Parliament, tho' it is kept in memory in the law books and records of the courts, as well as by the practice thereof. This customary law is also called the common law, and it derives force from the presumed consent of the legislature to the practice of it for 40 years. By this customary law, a statute of Parliament may be explained, and if the statute relate to the right of a private party only, it may go into disuse by a custom posterior and contrary thereto.

Neither the decisions of the court of Session, nor the judgments of the house of Peers are law in their own nature. They only bind the parties concerned in them; the rest of the lieges neither know them, nor are bound to know them. If such decisions prove or fix a custom, as part of the common law, that custom is law of itself, without the authority of the decision.

The Roman law, the canon law, and the feudal law, which are all written in latin, and were never adopted, or published in the British language, have no more authority in Scotland, than any other foreign system of law in an unknown tongue. Those laws have furnished cases, and helped the invention of lawyers, and so parts of them have been adopted, and become law in Scotland; but this extends no farther than to those adopted parts. The lieges in general, neither know those laws, nor have the means of knowing them, and they are not bound to know them, or to be regulated by them.

The great and fundamental rule of acting, of pleading upon human actions, and of judging them, is, *To do to others, as each of us would wish to be done to himself.* This is the source, the strength, and the spirit of all laws, in their sum and detail. And it is hoped that we will not have reason to except the law of Scotland from this golden rule, either in theory, or in practice.

On the INTERPRETATION of LAWS.

As laws, particularly statutes, or acts of Parliament, come to be considered and interpreted, a few observations concerning the interpretation of them will be proper in this place.

The fairest and most rational method, says a learned author, to interpret the will of the legislator, is by exploring his intentions at the time when the law was made, by signs the most natural and probable. Those signs are either the words, the context, the subject, the effects and consequence, or the spirit and reason of the law.

Words are generally to be understood in their usual and most known signification; not so much regarding the propriety of grammar, as their general and popular use. Terms of art, must be taken according to the acceptation of the learned in each art, trade and science. And where words are clearly repugnant in two laws; the latter law takes place of the elder.

INTRODUCTION.

If words happen to be still dubious, we may establish their meaning from the context; with which it may be of singular use to compare a word, or a sentence, whenever they are ambiguous, equivocal, or intricate. The proeme, or preamble, is often called in to help the construction of an act of Parliament. Of the same nature and use is the comparison of a law with other laws, that are made by the same legislator, which have some affinity with the subject, or which expressly relate to the same point.

Words are always to be understood as having regard to the subject; for that is supposed to be in the eye of the legislator, and all his expressions directed to that end.

As to the effects and consequence, the rule is, where words bear either none, or a very absurd signification, if literally understood, we must deviate a little from the received sense of them.

But, the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it; or the cause which moved the legislator to enact it. For when this reason ceases, the law itself ought likewise to cease with it.

From interpreting laws by the reason of them, arises what we call equity, or the correction of that, wherein the law is deficient by its universality. When the general decrees of the law come to be applied to particular

ticular cases, judges have a power of defining those circumstances, which had they been foreseen, the legislator himself would have expressed.

Therefore equity depends essentially upon the particular circumstances of each case, and there can be no established rules and fixed precepts of equity laid down, without destroying its essence, and reducing it to a positive law.

Judges must take notice of general acts, though they are not pleaded, but of particular or private acts, only when pleaded.

*On the WRITINGS, or SECURITIES and CONVEYANCES
used in SCOTLAND.*

All the substance which we can have, is by the law divided into two classes, called *Heritage*, and *Moveables*. Under the first, are comprehended lands, houses, fishings, mills, and whatever is annexed to land. Also debts secured by investment on land, jurisdiction, patronage &c. And under moveables, are comprehended all things that move; or can be moved; sums of money on bills and bonds, &c. not secured on land.

Now, if we omit superfluous words, latin phrases, and other expressions that are not necessary to the substance of a deed, but tend only to lengthen out the form, and prevent a ready and distinct apprehension of the subject; and if we take a view of the whole deed in the first place, and then of the several parts of it, in their order, we shall

shall gain a competent knowledge of every writ or deed which is necessary to be perused.

There is one form of writings for heritage, or heritable subjects, and another for moveables. Examples of both will be given in the following essay; but in the mean time, we may observe that whoever intends to draw a security or conveyance, should consider properly what he is about; the subject and the consequences; and observe such a form and method as shall reach the end in an easy and effectual manner. It will be of great use, to conceive things clearly and distinctly in their own natures; also completely, in all their parts; comprehensively, in all their properties and relations; extensively, in all their kinds; and orderly, or in a proper method.

The writer should also understand the general language of the country and use no words without ideas, nor many words where few will serve. Only let the sense and meaning always appear clearly, whether it be in more or fewer words. And he should use as few technical terms as possible, and make the parties speak in words of the present time.

And as writings come to be explained, we may observe what rules generally hold in the interpretation of them.

On the INTERPRETATION of WRITINGS.

Writings any how doubtful or ambiguous, are interpreted-

terpreted against the granter, who ought to have spoken more clearly. And in mutual contracts, they are interpreted against the person who made the condition, or is subject to the performance; he is understood to have dictated what concerns the obligations upon himself.

Where the meaning of a clause is plain, it cannot be confuted by the writer, witnesses or commoners. A writing cannot be taken away by witnesses.

The words of a contract are to be taken in the sense which is most agreeable to the subject of it. And the preamble or narrative, serves to explain the obligatory or dispositive part.

A contract ought to be considered in all its parts together, and one clause explained by another, and if upon the whole, the meaning of parties is clear, the words ought to yield to their intention. If the several clauses are plainly inconsistent, the posterior are understood to rectify and derogate from the prior; but such parts of a writing as are unintelligible, are holden as not added. However, mere errors of the writer are overlooked.

Where the words of a deed may have a double intendment, and one stands with law and right, the other is wrongful and against law; that which stands with law and right, shall be taken to be the meaning and intention of parties.

Where

Where the quality of any thing is not expressed, it is understood to be neither the best nor the worst of the kind, but of the middle sort. As if so much grain is due or contracted for, and where the price is not determined. But where the value of things not delivered, becomes due, it is regulated by the rate of such things at the time and place covenanted for the delivery.

Deeds of parties must be limited to the subject presumed to have been treated of, and not extended to things of a different kind, which were not in view.

The Law favours liberation rather than obligation.

All deeds imply the obligations incident by law to such kind of contracts, though nothing of them is mentioned therein; as a feu and long tack, may be annulled by declarator of irritancy, through non-payment of the feu or tack duty for two years.

E S S A Y
ON THE
F O R M S
O F
SECURITIES and CONVEYANCES,
BOTH
HERITABLE and MOVEABLE,
USED IN SCOTLAND.

P A R T I.

Concerning HERITABLE or REAL RIGHTS and CONVEYANCES.

EVERY person who has the right of land, or of an immoveable subject, and has the free administration of his estate, may dispose of it to another. Professed or known Papists are debarred by law from granting gratuitous deeds in prejudice of the heirs. And all persons, not disabled by law, may acquire and enjoy feudal rights. Papists cannot purchase a land estate by any voluntary deed; and aliens, who owe allegiance to a foreign Prince, cannot hold a feudal right without naturalization. And all members of any court of justice are prohibited to buy claims of heritable rights depending in court, under the penalty of deprivation.

Every heritable subject capable of commerce, may be granted in feu; excepting the annexed property of the crown, unless it be first dissolved in Parliament; and excepting tailzied lands, which are devised under condition, that they shall not

be

be aliened. Nor can an estate, to which the heir has not entered, be effectually aliened by him; but his alienation as apparent heir, becomes effectual upon his entry.

The feudal right, or the infeudation, investiture, or infeftment, is constituted by a charter and seisin. A charter contains the grant or disposition made by a superior to his vassal, for some thing to be performed or paid by the vassal. And it is called either an original charter, whereby the fee is first constituted; or a charter by progress, which is a renewed disposition of the fee. Charters by subject superiors are granted, for the lands to be holden either of the granters superior, which is called a public holding, or to be holden of the grant-er himself. All doubtful clauses in charters by progress ought to be construed agreeably to the original grant; and all clauses in the original charter are understood to be implied in the charters by progress, if there is no express alteration.

In some charters by progress, a clause of novodamus, or grant of new, is sometimes inserted, whereby the superior grants of new, or disposes the fee, as by an original right. Such charters imply a release to the vassal of all burdens affecting the property before the grant.

The form or model of a charter will be given in a little after this. And the seisin, which follows upon the charter, and completes the sale and purchase, will be taken notice of after the charter. Therefore we will pass on to the acquiring of a feu right in land.

Supposing a person to purchase land, lying in the country, and not in a royal borough, to hold the same as a vassal of the seller, who is to be his superior, in a *feu holding*, the purchaser should be satisfied, that the seller is proprietor and infefted in the subject, and also that the same is free of debt, and that he has full power to dispose of it. After this, the purchaser gets an original charter from the seller, conveying the lands to him for the price agreed, and for the yearly payment and services which are stipulated between them.

Such charters are frequently written in latin, not Ciceronian,

but Polish, Monkish or abominable, without any necessity in law, or real advantage to the parties; but I give the same in English, or the British language, which is sufficiently copious and expressive for every purpose.

MODEL of a CHARTER of LANDS in a FEU HOLDING
written on Stamped Parchment.

To all men who shall see or read this charter, greeting. *Know you* that I A. B. of C. proprietor of the lands and others after specified, for a certain sum of money now paid to me by D. E. of F. as the agreed price of the said subjects, of which I discharge him; and for the feu-duty aftermentioned, I have sold and disposed, and I do hereby *sell*, dispose, and in *feu farm* convey to the said D. E. and his heirs and assignees whomsoever, heritably and irredeemably, *all* and *whole* my lands and estate of G, lying in the parish of H, and the shire of I, with the houses, woods, mosses, and fishing thereof; also the mill, multures, services and sequels of the said estate; and the teinds of the same, both parsonage and vicarage; and the whole privileges and pertinents of the premises. As the said whole premises are at present possessed by me and my tenants. With all right and interest which I have, or that my successors may claim, excepting the feu-duty aftermentioned, to the said subjects in time to come. *To be holden* of me and my successors, in feu farm, fee and heritage for ever; *For payment* to us, as superiors of the said subjects, yearly, the sum of ten pounds lawful money of Great-Britain, in name of feu-duty, at the term of Whitsunday each year, and the double of the said feu-duty at the entry of each heir or singular successor in the said lands and others above disposed. And this for all other burdens and payments whatsoever, which I or my successors can exact or demand for the said subjects. *Providing*, that no heir or singular successor shall stand out unentered in the said lands and others for more than two years after the time of his predecessors death, or conveyance of the subjects, under the penalty

nalty of thereby forfeiting and losing the said subjects to me or my successors, without redemption, purgation or declarator. Which lands and others above disposed, I bind and oblige myself and my successors *to warrant* and maintain to the said D. E. and his above named, at all hands and in every event whatever. *Moreover* I desire and require you

and each of you my Bailies in that part specially constituted, that upon sight hereof, ye pass and *deliver* to the said D. E. heritable state and *seisin* with real, actual and corporal possession of all and whole, the lands, mill, fishings, tiends, and pertinents, before enumerated, by delivering to him, or his attorney in his name, bearer hereof, a little earth and stone of the ground of the said lands, the clap, and hopper of the mill, some grass and corn in place of the tiends, and net and cobble for the fishings, with other symbols that may be necessary and usual in such cases. Which to do I fully empower you jointly and severally by this precept. *In witness*, whereof, this deed or charter, written upon stamped parchment by K. L. writer in M. is subscribed by me at Edinburgh the first day of November one thousand seven hundred and eighty five before these witnesses, N. O. and P. Q. both writers in Edinburgh.

A. B.

N. O. witness.

P. Q. witness.

It is evident that this model of a charter is divided into these following clauses. 1st, A narrative, containing the certain names and designations of the granter and receiver; also the cause of granting the alienation or feu. 2d, A dispositive clause, settling the succession on the vassal, and his heirs and assigns; and describing the subject of the feu in a distinct and certain manner. The vassal gets right to nothing but what is contained or implied in this clause. 3d, The clause of holding, shewing of whom and by what tenure the fee is to be held. 4th, The clause of return, expressing the duty which the vassal owes to the superior for the feu and a provision of entry. 5th, A clause of warranty or warrant, whereby the granter binds himself to war-

rant

rant and maintain the subject absolutely. 6th, A precept of feisin, or a command by the superior to his Bailie for infefting the vassal. 7th, A clause of subscription, mentioning the writer, the place and date of subscription, with the names and designations of the witnesses.

Such charters as this may have a clause of registration, to be recorded in the books of Session only, but not in any other register.

Here we may notice how writings are executed, after being properly formed. The party, in practice, signs every page of the deed, and the last page, toward the right hand. The witnesses sign the last page only, at the left hand, as in the example; adding, witness, to their names. And if a party cannot write his name at length, he may subscribe by the initial letters of his name; but in this case, practice seems to require a proof, not only that he used to subscribe in that way, but that he really subscribed the deed in question. And therefore it is better, in rights concerning heritage, to have the deed subscribed by two notaries for the party, before four witnesses, when he cannot write.

Deeds may be written by way of book, in place of the former custom of pasting together the several sheets, and signing the joinings on the margin; provided each page be signed by the granter, and marked by its number, first, second, &c. and the testing clause express the number of pages. On this head, Lord Bankton, in his institute of law, observes, it is not necessary that the party sign each page where the writing consists only of one sheet, because here is no possibility that any part of the writing can be fraudulently altered, but likewise the words of the statute do not seem to reach this case. For such deeds could have no joinings of sheets to be signed before the act, and it requires only such deeds to be signed at the foot of each page, as were in use to be signed formerly at the joinings of the sheets. This is a useful observation, for ease and expedition in practice at the signing of deeds.

Marginal notes must be signed by the party, and the writing

ing bear that he did it before the witnesses, on the several pages where they are; which may be mentioned thus, before signing. Including the marginal note on the first page, written and signed as above. And each deed must be delivered to the other party, to make it effectual, if it be a simple obligation or deed of alienation. Mutual contracts are effectual on subscribing them, without delivery.

Upon the charter, the vassal should be forthwith invested or infefted in the subject, as his right is not complete, nor absolutely sure to him, before this is done. For if the granter of the deed were to give another conveyance of the same subject after it, to another person, who knew nothing of the first bargain, and if the last person were first infefted upon the posterior deed, he would be preferred before the first purchaser. And before infeftment, all diligence, which can be executed against the seller of the subject, will affect the subject in the same way as if it had not been sold.

This infeftment is completed by the superior or granter of the land and deed, giving possession of the subject, by himself or his bailie, to the purchaser, or vassal, or the attorney for him, by the proper symbols of earth and stone, &c. And this in presence of a public notary, from whom the purchaser requires an instrument as the evidence of this legal possession, before witnesses.

So that an instrument of feisin, is a certificate under the hand of a public notary, upon stamped parchment, and in proper form, that possession of the subject was delivered in terms of the charter or disposition. And this instrument must be registered in the general register of feisins at Edinburgh, or in the particular register of the county, within sixty days of the date of it; otherwise it is void and null.

Although instruments of feisin are formed by the notarys who give them, yet we may set down the form of one here for an example.

INSTRUMENT

INSTRUMENT of SEISIN *on the fore-mentioned Charter.*

In the name of God, Amen. Know all men, That on the twenty seventh day of March one thousand seven hundred and eighty six, and of the reign of our Sovereign Lord George the Third, King of Britain, France, and Ireland, the twenty sixth year, between the hours of two and three in the afternoon, *In presence* of me Notary-public, and the witnesses subscribing, appeared D. E. of F, and passed with us to the ground of the lands and others aftermentioned, *having* in his hand an absolute right and charter granted by A. B. of C, whereby he sold and disposed, and in feu farm conveyed to the said D. E. and his heirs or assignees whomsoever, heritably and irredeemably, *all* and *whole* his lands and estate of G, lying in the parish of H, and shire of I, with the houses, woods, mosses, and fishings thereof; also the mill, multures, services, and sequels of the said estate; and the tiends of the same both parsonage and vicarage, with the whole privileges and pertinents of the premises. As the said whole premises are possessed by the said A. B. and his tenants. And all right and interest which he had or might claim to the said subjects in time to come. As the said charter bearing date the first day of November last, and containing the precept of seisin after inserted, with divers other clauses, at more length sets forth. *Which Charter* the said D. E. presented to R. S. of T, bailie in that part, by the foresaid precept specially constituted, requiring him to perform the duties of his office. In agreeableness to which desire, he received the charter into his hands and delivered the same to me the Notary, to be read and published to the witnesses standing by. This I accordingly did, and I have hereunto annexed the precept itself, which is as follows; (here transcribe the precept of seisin from the charter, word for word, and then the clause of subscription, with the names of the granter and witnesses, saying before them, signed, so and so,) *After reading* and publishing the said charter, the foresaid R. S. in consequence of the office thereby committed to him, gave and delivered

livered to the said D. E. heritable state and state and seisin, real actual and corporal possession of all and whole the lands and estate, fishing, mill and tithes, and others before enumerated, by delivering to him a little earth and stone of the ground of the said lands, clap and hopper of the mill, some grass and corn for the tithes, net and cobble for the fishing, conformable to the said charter and precept of seisin in all points. Whereupon the said D. E. required instruments concerning the whole matter under the hand of me notary public. These things were done before P. Q. and T. U. both in Y. witnesses to the premises specially called and required.

Then follows the notary's docquet, and motto, his subscription, and the witnesses.

It may be noticed, that it is not necessary to mention in the dispositive clause of the charter, houses, woods, mosses or the like, because they are legally implied under the name of land and estate; and so are the rents, but it is necessary to mention mills and multures, salmon or other fishings and tithes, because they are passed over as separate tenements, and by separate symbols. Nor is it necessary to enumerate in the clause of warranty, the particular sort of burdens, from which the land and the purchaser are to be relieved, for they are all legally implied in the general denomination of all public and private burdens whatsoever, before the term of the purchaser's entry.

We may also observe, that the lands or feu, may be conveyed by the superior to the vassal by that form of a deed called a disposition, on stamped paper; as well as by a charter on stamped parchment. The difference of those deeds being more in form, than in substance. And some times, a contract of feu is made to the same purpose.

After the conveyance by the superior, he still remains infefted in the land for his superiority, feu-duty and casualty, and the vassal becomes proprietor for the property and whole profits, so far as they can be separated from the superiority.

When the vassal dies, or sells the land, the superior is obliged to receive the heir upon the offer of the sum specified for

this in the charter. And also to receive the singular successor, or purchaser from the vassal, on the offer of a year's rent, or whatever else is due by the charter, or by law.

Beside the holding, or tenure of land called *Feu holding*, above-mentioned, there are other three holdings, called *blanch*, *burgage* and *mortification*.

FEU HOLDING, from the example of the charter afore-specified, is that tenure, by which the vassal is bound to pay the superior yearly a sum of money, or other thing, in name of *Feu duty*.

BLANCH HOLDING, is that whereby the vassal stands bound, in mere acknowledgement, to return the superior an elusory duty, as a rose, a penny, a pair of gloves, or the like, in name of *Blanch farm*, if it be asked only. A charter of land with this holding or return may be easily formed from the example already given in *feu holding*.

BURGAGE HOLDING, contains the duty which royal boroughs owe to the king. The charters of such are granted by the sovereign from the chancery which have their own form. But the form of transmitting lands or houses in such holding will be afterward given.

MORTIFICATION, is that tenure by which the society, who receive the lands are bound to return the imaginary duty of prayers and tears, instead of all others.

The vassal being invested with the right and title of the fee, feu, or land, as already mentioned, he may let the same fall by succession to his heir at law, called a universal successor; or he may convey it by a voluntary deed of alienation to any person, who is called singular successor. In the first case, the heir takes up the subject by being served heir by a jury, on a brieve from the chancery, to his predecessor, which is the best way, and thereon obtaining from the superior a precept of seisin, called a precept of *clare constat*, to infest him. Or, he gets such precept, without any such service, and is thereon infested. In the latter case of singular succession, the vassal sells, or even gifts the estate, and grants a disposition thereof.

In the mean time we may set down the form of a precept of *clare constat*, founded on a service and retour.

PRECEPT *of* CLARE CONSTAT.

A. B. of C. superior of the lands and others aftermentioned, to you
and each of you my bailies, to the effect after specified specially constituted, greeting. Whereas it clearly appears, and by the extract or retour of the sheriff of L. dated
and duly recorded in chancery, it is known to me, that the now deceased D. E. of F. father of G. E. the bearer of this present, died at the faith and peace of the King, and that he was the last vested and seised in the fee of all and singular (here are to be inserted the lands and others, as they are specified in the infeftment of the defunct). And that the said G. E. is the lawful and nearest heir who can succeed to the heritage of his father. And that the said lands and others are held of me as the superior thereof, for payment of the feu-duty, and performance of the services following. (here are to be fully and distinctly inserted the feu-duty and services due by the vassal, which is better than to refer for them to the original rights of the land) *Therefore* I desire and impower you, and each of you, to pass and deliver to the said G. E. heritable state and seisin real, actual and corporal possession of all and singular the lands and others before specified, by delivering to him as heir in special to his said father, or his attorney in his name, bearer hereof, a little earth and stone of the ground of the said lands, as the custom is in such cases. For doing which this shall be your sufficient warrant. *In witness* whereof, &c. clause of subscription in common form.

Seisin cannot be taken on a precept of *clare-constat* after the death of the granter, or of the receiver; for by keeping up such precepts, the superior might be defrauded of diverse casualties.

When one intends to make a purchase, he ought to enquire into the seller's title to the land; whether he has proper instru-

ments of feisin in his own and his author's favour, for 40 years, which is the longest period of prescription for securing rights, and also has the charters or other warrants of those feisins. Whether the subject be free of debt and diligence, or of inhibitions, adjudications, and infestments for debt. This can be certainly known only by looking into the general register at Edinburgh, and the particular register of the county for feisins, inhibitions, interdictions and adjudications. The purchaser should also know, of whom the lands hold, and by what tenure. If the feuduties are paid and other services performed. Whether the seller has right to the tithes, by an heritable title, or by tacks; and if the minister of the parish is completely provided to a stipend and glebe according to law, because the deficiency in these cases must be made good from that and the other lands in the parish. And in point of prudence, the purchaser should know whether the rents of the land are racked, or not, and how far the land itself may be improved by new methods of management.

The parties being satisfied and agreed as to all these matters, and the bargain made, the seller delivers to the buyer a disposition or conveyance of the following or like form.

A DISPOSITION of LANDS in the Country, in a COMMON CASE.
To be well observed.

Be it known to all men from me A. B. of C. heritable proprietor of the lands and others aftermentioned. Whereas D. E. merchant in F. hath paid to me a certain sum of money, as the agreed price of the said lands and others, of which I discharge him; *Therefore* I have sold and disposed, and I *do* hereby *sell* and *dispose* to the said D. E. and his heirs or assignees whomsoever, absolutely and irredeemably, *all and whole* my lands and estate of G, with the houses, woods, mosses, mill, fishing and tithes both parsonage and vicarage, and the whole pertinents and privileges of these subjects, lying in the parish of H, and the shire of I, and at present possessed by me and my tenants. Also all right and interest which I have, or that
my

my successors may claim to the same, or any part thereof in time to come. In which lands and others above specified, I bind and oblige myself and my successors *to invest* and seize the said D. E. and his above named at their own expence, heritably, and irredeemably; and this by two investments and manners of holding. One whereof to be holden *of me*, my heirs and successors in freeblanch, for payment of a farthing lawful money, in name of blanch farm, at the term of Whitsunday yearly, provided the same be required; and for relieving us at the hands of the superiors of the foresaid lands and estate, of the duties and services payable to them out of the same. And the other of those investments, to be holden *from me* and mine aforesaid, of my said superiors, by the same tenure by which I hold of them myself. And for obtaining the said investment by *resignation* I make and constitute

and each of them my lawful and irrevocable procurators, for me, and in my name to resign and surrender, as I now resign, give up, and surrender all and whole my said lands and estate of G. with the houses, woods, mosses, mill, fishing, tithes, pertinents and privileges. And all right and interest which I have or that my successors may claim to the said subjects in time to come, *into the hands* of my immediate superior of the said subjects at the time, or of his commissioner having power to receive resignations in his name, *in favour* of the said D. E. and for new investment thereof to be reassigned to him and his heirs and assignees, absolutely and irredeemably, in due and competent form. And thereupon, instruments and documents to call for and receive, and to do every other thing relative to that affair which I might do, if I were present, and which I will hold firm and stable without revocation. And I bind and oblige myself and mine abovenamed to *warrant* and maintain the said lands and estate, in all the parts and pertinents abovementioned, to the said D. E. and his foresaid, at all hands and in every event whatever; also to free and relieve the said subjects and persons of all public and private burdens and duties where-with the subjects shall be affected at Whitsunday next, the term of the said D. E.'s entry to the possession of them. *Further,*

I assign and convey to the said D. E. and his successors, all and singular the title deeds, securities and writings of the said lands and estate granted to me, my predecessors or authors, with all that has followed, or may follow on the same. Also the rents and profits of the said estate from and after the fore-said term of entry, with all action competent to me for the same. And I bind myself and my successors to warrant this assignation to the writings, at all hands; and to the rents and profits, from my own fact and deed. *Moreover*, I have herewith delivered up to the said D. E. the rights and securities of the said estate, according to an inventory thereof subscribed by me, to be kept and used by him and his foresaid, as their own evidences in time to come. *Furthermore*, I desire and require you

and each of you, my bailies, to the following effect specially constituted, to pass to the ground, and deliver to the said D. E. heritable state and seisin, with possession corporal, actual and real, of all and whole the lands and estate, mill, fishing, tithes and pertinents above specified, by delivering to him or his attorney in his name, bearer hereof, a little earth and stone of the ground, the clap and hopper for the mill, net and coble for the fishing, and an handful of corn and grass, in place of the tithes, as the custom is in such like case, which I fully empower you to do by this precept. And I consent to the *registration* hereof in the books of council and session, or others competent, for preservation and to receive execution on the warrandice as effiers, appointing for that end

my procurators. In witness whereof this deed, written on this and the three preceding pages of one sheet stamped paper by L. M. writer in P. is subscribed by me at N. the fourteenth day of March one thousand seven hundred and eighty six, before the sewitnesses O. P. wright in S. and Q. R. mason there.

A. B.

O. P. witness.

Q. R. witness.

This complete form of a disposition contains these clauses, 1, a narrative of the name and designation of the granter, al-

so of the price paid and discharged by the receiver, who is likewise fully designed. 2. A despositive clause, containing the subject which is sold, by a proper description, and nothing is conveyed but what is contained or implied in this clause. 3. An obligation to invest the purchaser of the subject, and the holding. 4. A procuratory of resignation. 5. A clause of absolute warranty. 6. An obligation to relieve the purchaser and the subject of all public and private burdens and duties. 7. An assignation to the writings, and the rents. 8. A clause of delivery of the writings. 9. A precept of seisin. 10. A clause of registration and of subscription.

This purchase or conveyance is completed and secured by investiture taken on the disposition, as was noticed in the case of a charter.

But, if the seisin be taken on the precept in the disposition, the matter is not finished in a legal manner; till the superior be acknowledged, and grant his charter, confirming the investiture. Of which charter the following is an example.

CHARTER of CONFIRMATION.

To all to whose knowledge this charter shall come, Know ye, that I A. B. of C. superior of the lands and others aftermentioned, have approved and ratified, and I do hereby approve and ratify, and for me and my heirs and successors perpetually confirm a disposition dated the _____ day of March last, whereby G. K. of I. disposed and conveyed to D. E. of F. and his heirs and assignees whomsoever, all and singular (here the land others ought to be inserted as they are mentioned in the disposition) to be held in the form and manner mentioned in the said disposition. As that deed, containing diverse other clauses and obligations, more fully bears. Also the instrument of seisin proceeding on the said disposition, dated the _____ day of March last, and all that has followed or may follow upon the said disposition and seisin, Declaring that this charter of confirmation shall be as effectual and valid, as if the foresaid investiture were altogether ingrossed

fed herein, and as if this ratification had passed before seisin of the said lands was delivered. With which and with every thing that might be objected against the validity of this charter, I have for ever dispensed. Reserving however to myself and my successors the feu duties and services that are payable out of the said lands according to the original infeftment thereof. In witness whereof this charter, written on stamped parchment, &c. is signed and sealed, &c.

But if infestment is to be taken by resignation, on the procuratory in the disposition, this is to be done by form of instrument, in presence of a notary and witnesses. In consequence of which, there is first made out an instrument of resignation, and then a charter of resignation. Of both which, the following are examples.

INSTRUMENT *of* RESIGNATION *in favour of* a PURCHASER
of LAND.

[illegible]

of our Sovereign George the Third, the twenty sixth year, between the hours of eleven and twelve forenoon. In presence of A. B. of C. superior of the lands and others aftermentioned; and also in presence of me notary public, and the witnesses subscribing, appeared D. E. as procurator to the effect underwritten, specially constituted by F. G. conformable to the procuratory of resignation in an absolute and irredeemable disposition of the lands and others after specified, granted by the said F. G. to H. I. of date _____ And there the said D. E. with humility, resigned, gave up, and by staff and baton, as the custom is surrendered all and singular, &c. (here insert the lands, &c. as they are mentioned in the disposition, or conveyance) together with all right and title which the said F. G. had to the said lands, or any part thereof, *into the hands* of the said A. B. his immediate superior of the said lands and others; *to the end* that new investment of the same might

might be reassigned to the said H. I. his heirs and assignees, heritably and irredeemably, in due and competent form. (here the conditions, if there are any in the warrant, are to be inserted) accordingly the said A. B. having accepted the resignation by receiving the symbols into his hand, forthwith reassigned and passed over to the said H. I. all the lands and others before described, to be possessed and enjoyed by him, and his above named, heritably and irredeemably, in time to come and this by returning the symbols to the said D. E. who at the same time appeared as his attorney in that behalf, and who hereupon required instruments concerning the whole matter under the hand of me notary public. These things were done at the house of the said A. B. before and witnesses to the premises specially called and required.

In consequence of this resignation, the superior of the lands grants a charter to the new vassal, of which the following is a form.

CHARTER of RESIGNATION.

To all men who shall see or read this charter, greeting, know ye, that I A. B. of C. superior of the lands and others after-mentioned, for a sum of money paid to me by H. I. Merchant in K, as an agreed composition for granting him the right after specified, of which I discharge him, have granted and disposed, and I do hereby, for myself and my successors, give, grant, *dispose*, and perpetually *confirm* to the said H. I. and his heirs and assignees whomsoever, heritably and irredeemably all and singular (here the lands and others are to be mentioned as in the procuratory of resignation and dispositive clause in the disposition) with all right and interest whatsoever that I have, or that my successors may claim to the said subjects, in time to come; which lands and estate, with the pertinents belonged to F. G. who sold the same to the said H. I, by his disposition dated In which there is a procuratory of resignation in favour of the said H. I. for resigning the said

D

lands

lands and others to him and his heirs and assignees, that new infeftment may be reassign'd to him and them, heritably and and irredeemably. In virtue of which procuratory, D. E. as procurator for the said F. G. resign'd the said subject into my hands, as superior thereof, for the end therein mentioned, conformable to an instrument of resignation under the hand of O. P. notary public dated

To be holden, the said lands and others by the said H. I. and his successors, of me and my successors in feu farm and heritage for ever. The said H. I. and his successors *paying* to us yearly, (here is to be inserted the feu duty and prestations), for all other burden and exaction whatsoever, which we might exact or demand on account of the said lands and others. *Moreover*, I desire and empower you

and each of you, my bailies to this effect, specially constituted, &c. precept of seisin, and subscription in common form.

On this the purchaser takes infeftment, which completes the affair.

If the seller is to grant the disposition with consent of another person, that other person must be mentioned and design'd at the beginning, and his consent for all right and interest he has in the subject aftermentioned, and he must also sign the deed with the granter.

If the proprietor of the subject be a married woman, she must be mentioned as the principal person, and her husband only consenting in the deed, in this manner

Know all men from me A. B. spouse of C. D. merchant in E. and heritable proprietrix of the estate of F. after specified, with consent of my said husband, who takes burden on him for me. *Whereas*, &c. *Therefore* I have sold, &c. to the clause of warranty. Then say, And I and my said husband, bind and oblige ourselves jointly and severally, and our successors, to warrant, &c. Before the clause of registration, add this. And I become bound to satisfy this deed, upon oath, before a magistrate in absence of my husband, and in common form, whenever it is judged necessary, or required of me to do so.

The

The reason of ratification of deeds granted by married women, is to secure them against being reduced as extorted by force or fear of their husbands. But such ratification is not absolutely necessary for securing the grantee. Wives may bring reductions of deeds not ratified on oath, and if they prove, the deeds will be set aside, but if they fail, the deeds will remain effectual.

The following is a proper form of such a ratification which may be done before any judge, and written either at the end of the deed, or on common paper apart.

RATIFICATION *of a DEED by a MARRIED WOMAN.*

At P. the fourteenth day of March one thousand seven hundred and eighty six. In presence of A. B. Esq; sheriff substitute of the shire of S. appeared C. D. spouse of E. F. merchant in P. in the *absence* of her husband, and approved and ratified a disposition granted by her and her said husband to G. H. weaver in I. of date this day, in all the heads and articles thereof. Declaring that she granted the same willingly and freely, and was not compelled, or induced to do the same by force or fear of her husband. And she gave her great oath, that she shall never quarrel or impugn the said deed before any court or in any manner, as she shall answer to God. This she did before these witnesses K. L. and M. N. both residents in P. C. D. K. L. witness. A. B. M. N. witness.

If the disposition is to be granted by a minor, past fourteen years old, he is the principal person concerned, and is so mentioned, and his curators only consent to it, as the husband does with his wife. But the curators do not grant absolute warranty, nor join with him in doing so, for they do not get the money to their own use, though they receive it for him. They however all become bound that the minor shall ratify the deed when he is twenty one years old.

The RATIFICATION may be in this Form.

Know all men from me A. B. merchant in C. Whereas I am now past twenty one years of age, and in my minority I granted to D. E. merchant in F. a disposition of my estate of H. with consent of my curators, dated the first day of March one thousand seven hundred and eighty one. And whereas I am fully satisfied with that sale and conveyance, and it is required of me to ratify the same, Therefore I do hereby ratify and confirm the said sale and conveyance in every article thereof, and to all intents and purposes. Declaring that the said disposition shall be as valid and sufficient with the subject thereof, as if the said writing were inserted herein word by word. Whereanent, and concerning all defects that may be objected to it, or to this confirmation of the same I dispense for ever. And I bind and oblige myself and my heirs and executors to warrant this ratification to be valid and effectual to the said D. E. and his heirs and assignees at all hands and in every event. And I consent to the registration hereof, &c. in common form.

A pupil below fourteen years of age cannot sell his land, nor can his tutors do it for him. The only way to accomplish this where the estate is burdened with debt, is to obtain a decree of sale before the court of session. The tutors carry on a process for that purpose, and the pupil's creditors and nearest of kin are called, to see it found and declared, that there is a necessity for selling the whole, or some part of the estate, for payment of the debts. The court appoint the sale by public roup, and they adjudge the lands to the highest offerer.

If the disposition is to be granted by an apparent heir, not yet entered and infefted in the lands, he cannot be properly designed, heritable proprietor of the subject, but only such a relation to him who was last infefted, in this manner.

DISPOSITION by an APPARENT HEIR not entered.

*Know all men from me A. B. merchant in C. eldest son and
apparent*

apparent heir of the now deceased D. B. mason in E, my father, who was last vested and seized in the lands aftermentioned. Whereas, &c. onward to the obligation to invest. Then say, and in regard I am not invested in the property of the said lands and estate, I become bound to procure myself to be invested therein, without delay, and upon my own expence, and for this end I make and constitute the said F. G. himself, or and each of them my procurators, to purchase a brieve from his majesty's chancery, for obtaining me to be served and retoured heir in special to my said father, to proclaim the brieve, expedite the service, and return the same to the chancery. And after this, to raise a precept and other writings necessary for investing me in the said lands, and to procure me to be invested accordingly, in the most sufficient manner. Also to do every other thing concerning this affair, which I might do myself if I were present, and which I will ratify and confirm. And my title being so established, I bind and oblige myself and my heirs and successors, to invest and seize, &c. in common form.

If the disposition of the land, is to be granted by a man, with consent of his wife, she ought to be so mentioned for her consent, or other right and interest, and she should also dispense expressly with him, and grant warranty, jointly and severally with him. She should also become bound herself, to ratify the deed in due form, whenever she is required to do it.

And if the vassal were to sell the feu to the superior, he might grant a disposition and conveyance of it in this manner.

DISPOSITION by a VASSAL to his SUPERIOR.

Know all men from me A. B. of C. heritable proprietor of the lands after specified. Whereas D. E. of F, the superior of the said lands, has paid to me a certain sum of money as the agreed price of the said subjects, of which I discharge him for ever. Therefore I have sold and disposed, and do hereby sell and dispose to the said D. E. and his heirs or assignees whomsoever, absolutely and irredeemably, all and whole my estate and lands
of

of G, with the houses, moſſes, woods, mill and multures, falmon fiſhing, and tithes both parſonage and vicarage with the pertinents and priviledge of all theſe ſubjects lying in the pariſh of H, and ſhire of I, and at preſent poſſeſſed by me and my tenants. Alſo all right and intereſt, which I have or my ſucceſſors may claim to the ſaid lands and eſtate, and others, in time to come. And that I may be abſolutely diveſted of the property and the fee of the ſaid ſubjects. I hereby make and conſtitute

and each of them my lawful and irrevocable procurators, for me and in my name, to reſign and ſurrender, as I at preſent, *reſign*, give up and ſurrender *all* and *whole* my ſaid eſtate and lands of C. &c. (inſert them as above mentioned) and all right and intereſt, which I have, or that my ſucceſſors may claim to the ſaid ſubjects in time to come, *into the hands* of the ſaid D. E. and in his favour, the effect that my right of property being conſolidated in his perſon with his own right of ſuperiority; the lands and others above reſigned may remain and abide with him and his above named, abſolutely and irredeemably, in all time to come. And thereupon inſtruments and documents to call for and receive, and in general to do every other thing relative to this affair which I might do if preſent, and which I will hold firm and ſtable without revocation. And I bind and oblige myſelf and my ſucceſſors to warrant and maintain the ſaid lands and others to the ſaid D. E. and his above named, at all hands, and in every event. Alſo to free and relieve the ſaid ſubjects of all public and private burdens and duties whatſoever, wherewith they are affected at the date of this deed, which is the term of his entry to the poſſeſſion of the ſame. And I cede and aſſign to them all the writings and ſecurities of the ſaid lands and eſtate granted to me or my predeceſſors or authors, with all that has followed, or may follow thereon; alſo the rents and profits of the ſaid lands, from and after this date with all action competent to me for the ſame. Binding myſelf and my ſucceſſors to warrant this aſſignation to the writings, at all hands; and to the rents, from my own fact and deed. And I have herewith delivered
up

up to the said D. E. the writings of the said lands conformable to an inventory thereof subscribed by me, in order to be kept and used by him as his own evidences in time to come. And I consent to the registration, &c. in common form.

In this example, there is not an obligation to invest, nor a precept of seisin, because the deed is in favour of the superior, who is always invested in the subject, as well as the vassal.

This conveyance or resignation is completed by an instrument of resignation, under the hand of a notary, and registered within sixty days after its date. The form of which, the notary employed will give.

After giving an example of a deed by the vassal in favour of his superior, we may take one by the latter, of the superiority in favour of the vassal.

FORM of a DISPOSITION of the SUPERIORITY in favour of
the VASSAL.

Know all men from me A. B. of C. superior of the lands and others underwritten. Whereas D. E. of F. heritable proprietor of those lands, hath made payment to me of a certain sum of money, as the price of the subject after disposed, of which I discharge him, *Therefore* I have sold and disposed, and I do hereby *sell* and *dispose* to the said D. E. and his heirs and assignees whomsoever, absolutely and irredeemably, *all* and *whole* the lands and estate of G. lying in the parish of H. and shire of I. and at present possessed by the said D. E. and his tenants, with the houses, woods, salmon fishing, mill and multures, and the tithes both parsonage and vicarage, and the privileges and pertinents of the whole. In the fee of which the said D. E. stands vested and seized, holding the same of me as his immediate superior thereof. Also all right and title, both of property and superiority, which I have, or that my successors may claim to the said subjects in time to come. And I bind and oblige myself and my successors to invest and seise the said D. E. and his above named in the said lands and estate, and others above disposed, upon their own expense, heritably and irredeemably.

irredēemably. And that by a single infeftment only, to be holden of the king and his royal fucceffors, by the fame tenure, and as freely in all refpects as I at prefent hold or might have holden the faid fubjects myfelf. And for expediting the faid infeftment by *refignation*, I make and conftitute

and

each of them my lawful and irrevocable procurators, to refign and furrender, as I now *refign*, give up and furrender *all* and *whole* (here mention the lands again) and all right and intereft both of fuperiority and property which I have or which my fucceffors may claim to the faid fubjects. *Into the hands* of our fovereign lord the king, or his royal fucceffors, my immediate fuperior of the faid lands and eftate, or of his commiffioners having power to receive refignations in his name; *In favour* of the faid D. E. and for new infeftment to be reafsigned to him and his above named, in due and competent form. And thereupon, instruments and documents to call for and receive, and in general to do every other thing relative to that affair which I might do myfelf if prefent, and which I will hold firm and ftable, without revocation. I alfo bind myfelf and my fucceffors to warrant and maintain the faid lands and eftate and others above difponed, to the faid D. E. and his above named, fo far as concerns the fuperiority of the faid fubjects, at all hands and in every event. I farther affign and convey to him and them, all the writings and fecurities of the faid fubjects, with all that hath followed or may follow thereon. Likewise I renounce and convey to the faid D. E. and his forefaid, the feu duties and other preftations fpecified in the returning claufe of his infeftment, concerning the fee of the faid lands, both what are bygone and unpaid, and what are to come, for ever. Binding myfelf to warrant this affignation to the writings at all hands, and to the feu duties and other preftations, from my own fact and deed. Moreover, I have herewith delivered up to the faid D. E. the writings above affigned, according to an inventory thereof fubfcribed by me, in order to be kept and ufed by him, and his forefaid, as
their

their own evidences in time to come. *Furthermore*, I desire and impower you

and each of you my bailies in this behalf specially constituted, to pass to the ground of the said estate and deliver to the said D. E. heritable state and seisin, with real, actual and corporal possession, of all and whole the lands and estate and others before enumerated, by delivering to him or his attorney in his name, bearer hereof, a little earth and stone of the ground of the said lands, the clap and hopper of the mill, net and coble for the fishing, and an handful of grass and corn for the tithes, as the custom is in the like case for which this shall be your warrant. And I consent to the registration hereof, &c. in common form.

The peculiarity of this conveyance, which differences it from a disposition of the feu, before specified, is this. The disposer is mentioned as the superior of the lands, and the dispoonee, as already infested in the property. And the granter gives over all his right of superiority, feu duties and other prestations, as well as the property. To be holden by one infestment, of the king only. This alienation and conveyance is compleated by infestment and an instrument of seisin, in the first place, and then by a charter of confirmation from the crown. Or the vassal may first resign the subject into the hands of the crown, by the barons of exchequer, and then take out a charter of resignation, and be thereon infested.

If the sellers or disposers of a subject be societys, or bodys politic, such as corporations of royal boroughs, or of the trades or companies therein, the dispositions or conveyances are granted by the representatives, or managers of the societies, for themselves and the rest of the society. Such as the magistrates for boroughs, and the deacons and boxmasters for the corporations. On such occasions the purchaser should have an extract of the act of the town council, or of the corporation, by which the representatives are authorized to sell and dispoone the subject, in the name of the community, otherwise he cannot be sure that they are impowered to do so. And he being satisfi-

ed of this and of other proper matters, he may receive a disposition of the following or the like form.

DISPOSITION *by the* MAGISTRATES *of a* BOROUGH *to a*
PURCHASER.

Know all men from us A. B. Provost of the royal borough of C, D. E. and F. G. bailies, H. I. dean of guild, and K. L. treasurer of the said borough, for ourselves and as representing the other members of the town council, and also the whole body and community of the said borough, heritable proprietors of the subject after disposed. Whereas the said town council, by their act of date the fifteenth day of March last, authorised and impowered us to make the sale and grant the conveyance under written, of which act an extract is herewith delivered. And whereas M. N. merchant in O. hath paid the said K. L. treasurer, for the behoof of the said town council and community, the sum of one thousand pounds lawful money, of which we discharge him, *Therefore* we for ourselves, and as representatives aforesaid, have sold and disposed, and we do hereby *sell and dispose* to and in favour of the said M. N. and his heirs and assignees whomsoever, absolutely and irredeemably, the the land and estate of P. belonging to the said borough and community of C. lying in the parish of Q. and shire of R. and possessed by the said town council and their tenants. Also the houses, woods, pertinents, and privileges thereof; and all right and interest which we, or the said town council and community have, or may claim to the said subjects, in time to come, after the term of whitsunday next, which is the time of his entry to the possession of the said subjects. And we bind and oblige ourselves, as representatives aforesaid, and the said town council and our successors in office, to invest and seise the said M. N. and his above named, in the said lands and estate with the pertinents, upon their own expence, heritably and irredeemably; and that by a single investment only, to be holden of us and the said town council, and our successors in office, in *feu farm* and heritage, for payment of ten pounds lawful money yearly,

at the term of whitfunday each year, in name of feu duty, and doubling this at the entry of each heir and fingular fucceffor, in full of all duties and fervices, which we or the faid town council or our fucceffors in office may claim or demand for the faid fubjects. Providing however, that no heir or fingular fucceffor fhall ftand out unentered in the faid lands and others for more than two years after the time of his predeceffors death, or conveyance of the fubjects, under the penalty of thereby forfeiting and lofing the faid fubjects to the faid town council and community, without redemption, purgation or declarator. And we bind ourfelves and our fucceffors in office, and the faid town council and community to warrant and maintain the faid land and eftate to be good and fufficient to the faid M. N. and his forefaid at all hands, and in every event. *We alfo* for ourfelves, and as representatives aforefaid, defire and impower you

and each

of you our bailies, to this effect fpecially conftituted, to pafs to the ground and deliver to the faid M. N. heritable ftate and feifin, with real, actual, and corporal poffeffion of the land and eftate with the pertinents above fpecified, by delivering to him or his attorney in his name, bearer hereof, a little earth and ftone of the ground of the faid lands, as the cuftom is in the like cafe. And for fo doing, this precept fhall be your fufficient warrant. Then the clause of registration and of fubfcription.

The vaffal or receiver of a charter or difpofition may take it in favour of himfelf and his wife, in conjunct fee and liferent for her liefrent ufe, if ſhe furvive him and to the heirs of their marriage in fee. This is called a *conjunct fee*, and it may run in this manner.

**DISPOSITION to a MAN and his WIFE in CONJUNCT FEE
and LIFERENT, and to their SON in FEE.**

Know all men from me A. B. proprietor of the land after-mentioned. Whereas C. D. hath paid to me a certain ſum of money, as the agreed price of the faid ſubject, of which I dif-

charge him. *Therefore* I have sold and disposed, and I do *sell* and *dispose* to him and E. F. his spouse in conjunct fee and liferent, and to the longest liver of them, and after their decease, to G. D. their son, his heirs or assignees whomsoever, heritably and irredeemably, *all* and *whole* (here describe the land and estate in the particular manner of situation and possession, as before exemplified) with all right and interest, &c. And I bind and oblige myself, &c. to *vest* and *seise* the said C. D. and E. F. in conjunct fee and liferent, and the longest liver of them, and after their decease, the said G. D. their son, &c. in common form.

In deeds of this kind, the husband frequently reserves to himself, full power and liberty, without the consent of his wife or son, to alter the deed, and to dispose of the land, or burden it with debt, in any manner he shall think fit, notwithstanding the provision and conveyance in their favour. And when this is to be the case, the dispositive clause, may begin with a reference to it in general, as; heritably and irredeemably, under the reservation after expressed, all and whole, &c. And the clause itself may be mentioned either in the procuratory of resignation, or precept of feisin, referring from the one to the other. And such a person may exercise the reservation and faculty when he pleases.

A husband has right to the rents, and to the administration of his wife's estate, and it is subject to his debts during her or his life; but one may convey a land estate to her effectually, so as to be free both of his debts and management after this example.

DISPOSITION by an UNCLE to his NIECE, a MARRIED WOMAN, to be free of the HUSBAND'S DEEDS and DEBTS.

Know all men from me A. B. proprietor of the land and estate after mentioned, that for the love and esteem which I bear to C. D. my niece, spouse of C. F. I have disposed and conveyed, as I at present *dispose* and *convey*, on the condition after

after specified, to the said C. D. and to her own nearest heirs and assignees whomsoever, absolutely and irredeemably, *all* and *whole*, &c. with all right and interest, &c. And I bind and oblige myself to *vest* and *seise* the said C. D. &c. And for accomplishing the said infestment by resignation, &c. to resign, &c. *into the hands*, &c. in due and competent form. Providing always, as it is hereby provided and declared, and appointed to be inserted in the infestment to follow hereon, that the said E. F. her husband, shall have no concern whatever with the rents and profits of the said land and estate, on account of the husbands right and power, the courtesy of Scotland, or any other title whatever, and that the same shall neither be liable to his deeds, nor debts, nor the diligence of his creditors, now or in time to come, but that she shall have the sole power and management of the whole, as if she were not married. And thereupon, instruments and documents, &c. in common form.

We might also notice here deeds of entail, or tailzies; but it were well for this commercial country, that tailzied estates were less frequent or fewer in number than they are; or that there were a method of breaking the entails in the courts of law as they do in England. Creditors have often been ensnared and put to great loss by the proprietors of such estates running into debt, and not having moveable effects at their death sufficient to pay the debt.

And if the proprietor of any estate will dispose of it, why should he be restrained.

However we may set down an example of such a deed for the sake of information.

A DEED of ENTAIL.

Know all men from me A. B. heritable proprietor of the land and estate aftermentioned. Whereas I am resolved to continue my said estate and inheritance with my own children and posterity, and my other near relations, as much, and as long as may be, *Therefore* I have disposed and conveyed, as I do hereby,

by, under the reservations and conditions after specified, *dispose* and *convey* to C. B. my son, and the heirs whomsoever procreated of his body, who failing, to my other heirs of tailzie and provision aftermentioned, heritably and irredeemably, *all* and *whole*, &c. with all right and interest, &c. And I *bind* and *oblige* myself and my heirs, as well male, as of line, tailzie, conquest, or provision, and all others my successors whomsoever, jointly and severally, renouncing the benefit of the order of discussing them, under the limitations and conditions after specified, to *invest* and *seise* the said C. B. and his above named, who failing, my other heirs of tailzie and provision aftermentioned, in the said lands and estate, heritably, &c. And for expediting the said investment by *resignation*, &c. in favour of the said C. B. and for investment to be made and granted to him, and the heirs whomsoever of his body; who failing, to any other heir male procreated of my body; and the heirs whomsoever procreated of his body; who failing, to the heirs whomsoever procreated of my body, and the heirs whomsoever procreated of their bodies. The eldest daughter, or heir female of the said C. B. the institute, and of all the substitutes throughout the whole tailzie, having still the pre-eminence, and succeeding without division. Who failing, to C. B. eldest son of F. B. my brother german, and the heir male of his body; who failing, to G. B. second son of the said F. B. and the heir male of his body, who failing, to the heir male of the said F. B. to be procreated of his body, and the heir male of that heirs body; who failing, to the eldest daughter or heir female of the said F. B. and the heir male of her body; who failing, to the eldest daughter or heir female of the particular heir appointed to succeed on the failure of the descendants of my own body, and the heirs whomsoever of her body; and failing all these, to any person or persons who shall be nominated and called to the succession by a writing under my hand, at any time hereafter; and in case of no such nomination; to my own nearest heirs or assignees whomsoever, absolutely and irredeemably, in due and competent form. Reserving always to myself, my liferent of the said lands or estate, and reserving

to H. I. my spouse her liferent of such parts of the said estate as she is infefted in. Reserving also to myself power and liberty, at any time in my life, not only to alter this deed of entail, by inverting the course of succession hereby prescribed, in any manner I shall think fit; but also to sell or dispose of the said land and estate, in whole or in part, as I shall be inclined; and to do every other thing concerning the same which I might have done before granting this deed. I also provide and declare, that the said C. B. and the other heirs of entail above specified, shall be obliged to fulfil all the obligations, and to pay all the debts which I shall be bound for at the time of my decease; particularly, the provisions of my younger children, in terms of the several bonds of provision made by me to them. And that in case the right of succession shall at any time after this, fall to the female heirs, the eldest female shall always succeed without division, and exclude her sisters from being heirs portioners with her; and she, and her husband, and their heir who is to succeed to the foresaid estate, shall be holden from that time forward to assume and use the surname of B. if they were called by another name, and to bear the arms of that family in all time thereafter. And that it shall at no rate be allowable for the said C. B. or any of the substitutes, to sell or dispose of any part of the said inheritance, or to contract debt, or do any other deed whereby it may be affected, burdened, adjudged, or evicted from succeeding members or heirs, or their hopes of succession thereto in any way evaded. And if they do in the contrary, it is declared, that the deeds of contravention shall be absolutely void and null, and of no strength in law, or effect whatsoever, so as to attach the said estate; also that the contraveener and the heirs of his body shall thereby forfeit his right and possession of the estate, and the same shall fall and belong to the heir next in the substitution, who immediately on the back of the contravention, may commence a declarator thereof, and serve heir to the person who died last invested with the estate, passing by the contraveener, without representing him, or being any wise liable to fulfil his obligations.

Nevertheless,

Nevertheless, it shall be allowable for them to sell and dispose of as much of the foresaid land and estate, as shall be necessary to pay the debts resting by me at my death; provided they do no more. And it is declared, that the heir at the time may provide his spouse or husband to a life rent annuity of one hundred pounds lawful money, which I appoint to come in place of the terce, or courtesy, to which they might have been otherwise entitled, and to which annuity the said legal life rents are hereby expressly restricted. Lastly, it is enacted, that these irritant and resolute clauses shall be adjoined to the investiture following hereon, and repeated in all the after conveyances, retours and investments of the said tailzed estate, as the same shall pass from one member to another; and that the failure shall import a contravention against the omittor and his heirs, so as to make the inheritance fall to the substitute next in order by the course of succession above prefixed, who may from that time forward, sue for a declarator of the delinquency, and establish his right in manner above enjoined. And thereupon, instruments and documents to call for and receive, &c. Moreover I hereby cede and assign to the said C. B. and his above named, who failing, as aforesaid, all and singular charters, &c. Also the rents and profits, &c. And I desire and empower you

and each of you my bailies, &c. but always under the reservations conditions and qualifications above related, which are here holden as repeated and expressed. For which this shall be your sufficient warrant. Then a clause of registration in the register of tailzies, for publication, or others competent, and of subscription in common form.

So that we see a tailzie or entail is the settlement of a land estate, on a long series of heirs, substituted one after another. It has its name from *tailleur*, to cut, because the lineal succession at common law, is cut off in their favour. The person first called in the tailzie, is the institute; the rest, the substitutes or heirs of tailzie.

Tailzies are either simple destinations, or with prohibitory clauses, or with prohibitory, resolute and irritant clauses.

The

The first is of no force in favour of the heirs who might succeed. Tailzies with prohibitory clauses, declaring that it shall not be lawful to the heirs to contract debts, or sell the lands, prevent the heirs from aliening gratuitously. But the members of entail may contract debts or sell the estate for onerous causes. But in the third sort, where the tailzie is guarded with irri- tant and resolute clauses, as in the example given above, the estate cannot be carried off by the debt or deed of any heir, in prejudice of the substitutes. Tailzies must be registered in the public register for that purpose, in order to make them effectual.

Tailzies are strictly interpreted, and nothing in their favour, is inferred by implication. Rights may be acquired by one in name of another, as by a tutor for his pupil, a curator for his minor, a factor for his constituent, and the like. The style of such runs in this manner. In consideration of the sum of paid to me by C. D. tutor to E. F. in the name and behalf of his said pupil, of which I discharge him, &c. I have sold and disposed, and do hereby sell and dispose to the said E. F. &c. without mentioning the tutor again, except when the delivery of the writings, is specified. They are to be mentioned as delivered up to the tutor for his pupil. And so, in the case of the minor and constituent.

In the same manner, where the right is acquired by a society or incorporation, the price is said to be paid in by the treasurer of the society, or boxmaster of the incorporation, on behalf of the community; and the dispositive clause, and other clauses of the conveyance run directly in name of the society itself, or of the magistrates of the borough, and their successors in office for themselves, and as representing the town council and whole community; or of the deacon and boxmaster of the incorporation and their successors in office, for themselves, and in behalf of the other members.

If one were to make over his estate to his creditors, or trustees for them, the deed or disposition would proceed, on the narrative that he owes sundry debts, which he is not able to pay, conformable to a list thereof, and of his creditors, sub-

scribed by him, and herewith delivered; and he being willing to give payment, and satisfaction to the utmost, he disposes and conveys to A. B. and C. three of his creditors and to any two of them accepting, and to the survivor of them, for themselves, and as trustees for his other creditors contained in the said list, equally and proportionally, all and whole, &c. Then the obligation to invest, and the procuratory of resignation, to the words, absolutely and irredeemably, in due and competent form. When, any conditions, or mode of management, which are reasonable, or agreed on, may be added. Such as the reservation of any liferent on the estate, or the preferable value of it, out of the price; and power of selling the estate by public roup or private bargain, as soon as may be, and to apply the free price, after deduction of expenses, to the payment of the debts. And to prevent law pleas and expense, that the trustees shall submit every thing to the decision of one or more arbiters. Also that the trustees shall not be charged with omissions, but for actual intermeddling; nor for one another, but each for himself. That the purchaser is to have no concern with the application of the price, but is to pay it down simply, and depend upon the disponent and the trustees warranty. And so, the procuratory of resignation, and the other clauses of the deed proceed in common form.

Having so far treated of absolute rights of land, lying in the country, without the territory of a royal borough, which is of a separate holding, we may now take an example of the form of a disposition, or conveyance of a tenement lying within a royal borough.

DISPOSITION of a BURGAL TENEMENT.

Know all men from me A. B. merchant in C. heritable proprietor of the subject after disposed. Whereas D. E. Mason in F. hath paid to me a sum of money, as the agreed price of the said subject, of which I discharge him, Therefore I do hereby sell and dispose to him, and his heirs and assignees whomsoever, absolutely and irredeemably, all and whole my land,

or

or tenement of land and houses, lying within the royal borough, of G. on the north side of the highstreet thereof, by west the market cross, and bounded with the tenement of H. on the east, the said street on the south, the tenement of I. on the west, and the public passage of the said borough on the north. Also the privileges and pertinents of the said tenement, and all right and interest which I have or may claim to the said subject, in time to come after whitsunday next, which is the term of his entry to the possession of it. Which tenement belonged to P. Q. who disposed the same to me. And I bind and oblige myself, and my successors, to vest and seise the said D. E. and his above named on their own expense, in the said land or tenement, with the pertinents, *To be holden* of the king, in free burgage, fee and heritage, for payment of the duties, and performance of the services used and wont. And this by resignation as aftermentioned. And for that purpose, I make and constitute

and each of them my procurators, to resign and surrender, as I now resign, give up and surrender all and whole my said land, or tenement of land and houses, with the privileges and pertinents, and all right and interest which I have therein, *Into the hands* of any of the magistrates of the said borough at the time, as into the hands of the king, my immediate superior thereof; *in favour* of the said D. E. and for new investment of the same to be made and granted to him, and his foresaid, heritably and irredeemably, in due and competent form. And thereupon, instruments and documents to call for and receive, and to do every other thing which I might do myself, if present, and which I will hold firm and stable, without revocation. I also assign and convey to the said D. E. and his above named, all the writings and securities of the said tenement, which I have, or am entitled to, without any reservation or objection. And I bind myself and my successors to warrant and maintain the said tenement and pertinents, with the writings thereof, to the said D. E. and his successors, at all hands, and in every event; also to free and relieve the said subject of all public and private burdens and debts, with which

the same shall be affected at the said term of his entry to the possession. And from that term, I assign to him all the rents and profits of the said subject, and bind myself to warrant this from my own fact and deed. And I have herewith delivered to the said D. E. a sufficient progress of writs and title deeds of the said subjects, for forty years, in order to be kept and used by him and his above named, as their own evidences in time to come. Then follows the clause of registration, and of subscription, in common form.

Upon a disposition of this kind, the purchaser, or receiver must be infefted by one of the magistrates, and the town clerk as notary. And the instrument of seisin must be registered in the town clerk's book or register of seisions for the borough, within sixty days after the date.

The principal difference between the form of a disposition of land in the country, and that in a royal borough, is this. The former has a precept of seisin for infefting the receiver, which the latter has not, as seisions within boroughs pass always by resignations.

The last thing to be noticed concerning the four sorts of holdings aforementioned, is that called a *mortification*. It is so named as being a right to a dead hand, or in mortmain, which never returns to the donor, and yields no casualties to the superior, more than a dead man's hand can perform service. The vassal in this case, being a corporation, never dies, and they cannot transfer the subject to another. Lands may at this day be mortified to any lawful purpose, either by blanch or by feu holding, and the conveyance differs in nothing from a common conveyance of land, but in this, that the receivers are a corporation, instead of a single person. Unless there be any special conditions, and then they must be mentioned.

DEED of MORTIFICATION.

Know all men from me A. B. of C. heritable proprietor of the lands aftermentioned, that I have given and disposed, as I do hereby give, dispose and convey to Mr D. E. minister,
and

and F. G. &c. elders of the church of K. and to their successors in the ministry and eldership of that church, for behoof of the poor and needy of the parish of K. absolutely and irredeemably, all and whole, &c. (here describe the lands.) With all right and interest which I have, or that my successors may claim to the said lands in time to come. In which lands and pertinents I bind and oblige myself and my successors to vest and seise the said Mr D. E. &c. And for obtaining the said infeftment by resignation, &c. in due and competent form. Providing however, that the rents and profits of the said land, shall be applied by the said minister and elders yearly, to the relief and maintenance of the poor and needy housekeepers, and other indigent persons, who at the time reside in the said parish, and cannot procure a living by their own industry. And thereupon, instruments and documents, &c. And I assign and convey to the said minister and elders and their successors in office the writings, &c. and the rents, &c. in common form. And I bind and oblige myself and my successors to warrant and maintain the foresaid lands, writings and rents to the said minister and elders, and their successors in office, against all facts and deeds to be done by us at any time hereafter, in prejudice of this alienation. Then follows the delivery of the writings, the precept of seisin, and registration, &c. in common form.

This deed and alienation is completed by infeftment as in other conveyances.

The vassal, or proprietor of land, having acquired full right and title thereto, may dispose of it in sundry ways. He may contract debt upon it, and grant heritable security for payment. Or he may allow the same to be adjudged from him by a decree of the court of session for security and payment. In the first case, he grants a wadset, or a heritable bond on the lands.

CONTRACT of WADSET of LANDS.

It is agreed and contracted between A. B. of C. heritable proprietor of the lands and others aftermentioned, on the one
part,

part, and D. E. merchant in P. on the other, to the following effect. *Whereas* the said D. E. hath advanced and paid to the said A. B. the sum of one thousand pounds lawful money, of which the said A. B. discharges him, *Therefore* the said A. B. hath sold and disposed, and now *sells* and *disposes* to the said D. E. his heirs or assignees whomsoever, heritably, but under reversion as after specified, *all* and *whole* the said A. B's lands and estate of C, (here describe the lands from the proprietors infeftment) and all right and interest which the said A. B. has or may claim to the said lands and others during the non-redemption. *In which* lands and others, the said A. B. binds and obliges himself, and his successors on their own expense, to vest and *seise* the said D. E. and his aforesaid heritably; and this by two infeftments and manners; of holding, one to be held of the said A. B. and his heirs in free blanch, for payment of a farthing, lawful money, at whitsunday yearly, if the same be required only; and the other to be held of the said A. B's immediate superior of the said land by the same tenure, which his self holds of him. And for effectuating the said infeftment by *resignation*, the said A. B. makes and constitutes

and each of them his lawful procurators, for him, and in his name to resign and surrender, as he now hereby *resigns*, gives up, and surrenders *all* and *whole* his foresaid lands and estate of C. with the pertinents and privileges thereof, and all right and interest, which he has to the same, *Into the hands* of his immediate lawful superior, or of his commissioner having power to receive resignations in his name, *in favour* of the said D. E. and for new infeftment of the same to be made and granted to him and his above named, heritably and under reversion as after specified. And thereupon, instruments and documents, to call for; and receive, and in general, to do every other thing which the said A. B. might do, if present, and which he will hold firm and stable without revocation. Which lands and others above designed, with the pertinents, the said A. B. binds and obliges himself and his aforesaid to warrant to the said D. E. and his successors, at all ha-

and in every event, during the non-redemption. And he binds himself to free and relieve the same of all public and private debts and burdens, with which they shall be affected at Martinmas next, being the term of the said D. E's entry to the possession thereof. And if it please the said D. E. to hold the investment of the granter, in that case the said A. B. obligeth himself and his successors, to receive the said D. E. and his aforesaid, vassals to them in the same, without any composition or gratuity to be paid on that account; and also to dispoſe in their favour the casualties of relief, nonentry, and all other casualties whatever, that shall fall into their hands as superiors of the said estate. And the said A. B. assigns and conveys to them all the rents and profits of the said land and estate for the crop and in-time to come after the said term of entry. Which assignation he binds himself and his aforesaid, to warrant against his own facts and deeds in prejudice thereof. *And as it is agreed*, that the said D. E. is to take his hazard of the rent of the lands. for the interest of his money, without minding any accident that may fall in the way. And as he is to satisfy the public burdens affecting the estate from the time of his entry, during his possession; so it is agreed, that he shall have the full rents and profits of the estate, without any abatement on account of the excess wherein the same may happen to surmount the interest of the aforesaid sum; any law to the contrary notwithstanding. And, in order to ascertain the value of the houses on the said lands, at the entry of the said D. E. and at the time of redemption, it is agreed that they shall be surveyed and appretiated by two skilful men, of whom one is to be chosen by each party, at the foresaid periods, and that the said D. E. shall be bound to repair and leave them in a condition as good as that in which he received them, and if they be better at the redemption, than at the entry, the said D. E. shall have right to the surplus value, provided the overplus do not exceed Thirty pounds lawful money. *Moreover*, at whatever time the said D. E. shall desire to have his money returned, the said A. B. binds himself and his aforesaid to make payment of the same forthwith, under the penalty of

a fifth part more in case of failure. Requisition however being made in the first place, forty days preceeding the time at which the said D. E. intends to have the money. In the mean time it is enacted, that no diligence, personal or real, following on this deed, shall weaken or invalidate the present security, but that this infestment shall continue in force and effect, till the redemption be accomplished. Lastly, the said A. B. desires and requires you, &c. (a precept of seisin in common form). Providing always, that the lands and others above designed, be redeemable by the said A. B. his heirs or successors, on payment to the said D. E. or his above named, at martinmas next year, or at any other whitsunday or martinmas thereafter, of the above mentioned principal sum of one thousand pounds lawful money, and of the expense of the infestment, or of diligence done for operating payment of the said sum, or in making reparations on the foresaid houses; providing that this last article do not exceed the sum allotted for that end, without any previous premonition to be made for that purpose. And providing that this contract, or an extract thereof, or of the seisin to follow upon it, shall serve as a sufficient reversion for that effect; any law or practice to the contrary notwithstanding. (clause of registration, and of subscription)

A wadset, from wad or pledge, is a right, by which lands, or other heritable subjects, are conveyed in pledge by the proprietor or debtor to his creditor, in security of debt. Like other heritable rights, it is perfected by seisin, or legal possession. The granter of the wadset, who has the right of redemption, or reversion, is called the reverser. The creditor who receives the pledge or wadset, is called the wadsetter.

Wadsets are now commonly made out in the form of mutual contracts, in which one party sells the land, and the other grants the right of reversion, as in the example above specified. But if the wadset and reversion were in different writings, the reversion must be recorded in the same register with seisins, and within sixty days of its date; otherwise it will not be effectual against singular successors.

Beside wadsets themselves, which are completed or made
real

real rights by feisin taken on them, there are sometimes eiks to them; which eiks are reversions in writing signed by the reversers, or debtors, acknowledging the receipt of more money lent by the wadsetters, and declaring the wadset not redeemable, till payment of the last debt, as well as of the first. Those eiks become real and effectual, by being registered within sixty days of their dates in the register of feisins.

Reversions commonly leave the reverser at liberty to redeem the lands at any time, but sometimes a clause is added, that if the debt be not paid at a certain day, the right of reversion shall be irritated, or made void, and the lands shall become the irredeemable property of the wadsetter. Such clauses are effectual in contracts, investments and obligations. But because the sum lent generally falls short of the value of the lands, the right of redemption is continued to the reverser, even after the term has expired, while the irritancy is not determined and declared by the court of session. But if the reverser does not use this indulgence within forty years after the lapse of the term, he is excluded by prescription.

Where the wadset is granted to be holden of the debtor's superior, letters of regrefs from the superior are sometimes granted, by which he becomes bound, to receive the reverser again as his vassal, upon redemption of the lands; but, without such letters of regrefs, the superior must now receive the reverser on payment of a year's rent, if he produce a disposition from the wadsetter, containing a procuratory of resignation. If the superior has granted letters of regrefs, he will be obliged to receive the reverser as his vassal, without payment of the year's rent; which is so far an advantage, by obtaining such letters. And such letters ought to be registered in the register of reversions, in order to make them effectual against singular successors.

Wadsets are either proper, or improper. The former is that, whereby it is agreed, the use of the land shall go for the use of the money; so that the wadsetter takes his hazard of the rents, and enjoys them without accounting, in satisfaction or payment of his interest. The lands are redeemable upon

payment of the principal sum only. The example of the contract of wadset above specified, is for a proper wadset.

But an improper wadset is that, wherein the reverser, or debtor is bound to make up the deficiency of the rent, if it falls short of the interest. And if the rent amounts to more, the wadsetter is obliged to apply the surplus towards payment of the principal sum. And there is no other difference between the contract of a proper and an improper wadset, but this. In the latter, as the wadsetter does not usually incline to possess the lands himself, and uplift the rents, he sets a tack of them to the reverser, for a certain tack duty, and the performance of such articles as are agreed on between them. So that we may in the example, given above, break off at the words, *And as it is agreed*, to the words, *Moreover*, at whatever time; and insert the following clauses.

On the other hand, the said D. E. hath set, as he now sets, and for the annual rent or tack duty after specified, lets out to the said A. B. and his heirs or assignees, all the lands and others above described, from and after the term of whitsunday next, during the nonredemption. With power to them to possess and enjoy the said subjects, as fully and freely, as the said D. E. might have done himself, if he had retained the possession in his own hand. For which reason, the said A. B. binds and obliges himself and his above named, not only to pay to the said D. E. and his aforesaid, an annual rent of fifty pounds lawful money, or of such an annual rent as by law shall correspond with the said principal sum, at whitsunday yearly; but also to satisfy and pay the cesss, feu duties, ministers stipends, and all other public burdens wherewith the said subjects at present are, or hereafter shall stand affected. And it is agreed, that if the foresaid tack duty shall ever continue resting for two years together, the said set or location, in that case, shall become utterly void and extinct. And from that time forward, it shall be allowable for the said D. E. to recur to the possession of the lands and to expel the reverser therefrom, as law will. With the burden of which irritancy, this back tack is granted

granted and accepted, and no otherwise. *Furthermore, &c.* as in the example.

LIK to a REVERSION.

Know all men from me A. B. of C. Whereas by a contract of wadset between me on the one part, and D. E. merchant in P. on the other, of date , I acknowledged the receipt of one thousand pounds, borrowed lawful money, and therefore I sold and disposed to him, and his heirs or assignees whomsoever, heritably, but under reversion as therein specified, all and whole my lands and estate of C. (here narrate the lands.) In which lands and others, I bound myself and my successors, upon our own expence, to vest and seise him. As the said contract more fully bears. Upon which contract, I was duly invested in the said subjects, conformable to my instrument of feisin dated the day of last, and duly recorded. And it, is by the said contract agreed, that at whatever time the said D. E. shall desire to have his money returned, I bound myself and my successors, to pay the same forthwith, and a fifth part more of penalty in case of failure. Requisition however being made in the first place, forty days preceding the time at which he intends to have the money, and the said investment is to continue in force, notwithstanding any diligence to be done, till the redemption be accomplished. And whereas the the said D. E. has advanced and lent to me the sum of five hundred pounds more, of lawful money, of which I grant the receipt and discharge him; and this is done in the view of getting the same secured on the said estate, with the one thousand pounds above specified; *Therefore* I have added and eiked, and I do hereby *add and eik* the said sum of five hundred pounds to the aforesaid sum of one thousand pounds, with the interest and penalty attending the same; hereby binding myself and my successors, and declaring that the money now received, is and shall be secured, and a real burden on the said estate of C. as much and as effectually, as if it had been at first lent to me, and included with the foresaid one thousand pounds in the a-

forementioned contract of wadset, and the infestment. And declaring that the said estate of C. and the pertinents shall not be redeemable or redeemed by me or my foresaid, or my right of reversion thereof shall not take effect, even for the one thousand pounds, till the said five hundred pounds be also paid along with it. I also bind myself and my successors to warrant this security to the said D. E. and his foresaid at all hands. And which sum of five hundred pounds, &c. I bind myself and my successors to pay to the said D. E. and his above named, when they demand the same, on requisition in manner above mentioned. But providing that on payment of this five hundred pounds with the said one thousand pounds, and the expence attending the same, the said lands and estate of C. shall be redeemable and redeemed, as specified in the said contract of wadset. And I consent to the registration hereof in the general and particular register of feifins and reversions, and others competent for preservation and publication, and that all necessary execution follow on the same as aforesaid, appointing for that end, &c. in common form.

This eik, as was noticed above, becomes effectual by being registered in the register of feifins sixty days after its date.

*REGRESS by the SUPERIOR to his VASSAL at GRANTING a
WADSET.*

To all men, to whose knowledge this shall come, A. B. of C. superior of the lands and others after specified, sendeth greeting. Whereas D. E. of F. as proprietor of the said lands and pertinents, by a contract of wadset between him and G. H. of I. dated hath sold and disposed to the said G. H. and his heirs and assignees, heritably, but under reversion; as therein mentioned, all and whole the lands and estate of F. (here describe the lands,) and all his right and interest therein during the non-redemption. And he bound himself and his successors, to infest and seise the said G. H. in the said lands and others, *to be holden* from the said D. E. and his above named, of me and my heirs and successors, his immediate lawful superior

superior of the same. As the said contract more fully bears. Upon which contract the said G. H. is just now to be infested in the said lands. And whereas it is in the power of the said D. E. and his successors to redeem, and free the said lands and estate, in terms of the reversion contained in the said contract, and thereby have free regrefs, and access to the same, therefore, whenever he or they shall procure the said redemption and reversion, and be reinstated in the property of the said lands and others, free of the said wadset, then, I as superior of the lands, bind and oblige myself and my successors, to receive and admit him, and his foresaid again as vassals to us in the said lands and others, without any composition or payment for so doing; but they to hold the subjects of us, as freely, and in the same manner as the said D. E. did hold the same before he granted the wadset thereof. And I bind myself and my successors to grant him and his foresaid a charter of confirmation, and other writings necessary in this behalf, but always upon the expence of the said D. E. and his above named, to the end above mentioned. In witness whereof, &c. in common form.

On REAL WARRANDICE.

Real warrandice is either exprefs, or tacit. The first is, when in security of lands principally conveyed, other lands, called warrandice lands, are also made over; to which the receiver may have recourse, if the principal lands be evicted from him. Tacit, or implied warrandice is constituted, by the exchange or excambion of one piece of ground with another. If the lands exchanged are carried off from either of the parties, the law itself, without any paction, gives that party immediate recourse upon his own first lands, which he had given in exchange for the lands evicted, even tho' a third person should have acquired a real right in them, prior to the eviction. But this holds only, where the grant, by which the lands are exchanged, is exprefsly said to be an excambion.

It is not expedient for the landed interest of a country,
to

to have real estates, or heritable subjects clogged with such warrandice; every estate should stand as much by itself as possible, without hazard from connection with any other. But we shall set down an example of a contract of excambion, for the sake of information.

CONTRACT of EXCAMBION.

It is agreed and contracted between A. B. of C. on the one part, and D. E. of F. on the other, to the following effect. Whereas the said parties judge it to be for their mutual convenience and interest, to make the excambion underwritten, the said A. B. hath therefore exchanged, sold and disposed, and he doth hereby, exchange, sell and dispose to the said D. E. his heirs or assignees, heritably and irredeemably, all and whole (here describe the lands in a proper manner), also all right and interest, &c. As, on the other hand, the said D. E. in consideration of this exchange, and of the sum of three hundred pounds lawful money, instantly paid to him by the said A. B. as the agreed odds of the value of the said D. E's estate above the other, the said D. E. hath exchanged sold and disposed, and he does also hereby exchange, sell and dispose to the said A. B. and his heirs or assignees, heritably and irredeemably, all and whole the said lands and estate of F. (here describe the lands), and all right, &c. *Further*, both the said parties engage themselves, each for his own part, and and their successors, on their mutual expence, to invest and seise one another in the lands and others severally exchanged and disposed as above, absolutely and irredeemably. And this by two investments, in due and competent form; one thereof to be holden of the disponent and his above named, in free blanch, for payment of a farthing, lawful money, in name of blanch farm at whitfunday yearly, provided the same be required; and for relieving the disponent at the hands of the superiors of the said lands and estate, of the duties and services, payable to them out of the same. And the other of those investments to be holden of the said parties respective superiors
of

of the beforementioned subjects, by the same tenure whereby they hold of them themselves. And for perfecting the said infestments by resignation, the aforesaid parties hereby make and constitute

and each of them, &c. to resign and surrender, as they now interchangeably resign, &c. the lands and others above specified, in the following manner. The said A. B. resigns and gives up all and whole his land and estate of C. &c. *into the hands, &c. in favour, &c.* As the said D. E. for his part also resigns, and gives up all and whole, his land and estate of F. &c. *into the hands, &c. in favour, &c.* heritably and irredeemably. And thereupon, instruments and documents, &c. *Moreover*, the said A. B. and D. E. bind and oblige themselves reciprocally, and their heirs and successors, to warrant and maintain the several subjects alternately exchanged and disposed by them, in manner above expressed, to be good and sufficient to the party receiver, and his above named, at all hands, and in every event of eviction and others whatsoever. Also to free and relieve the same of all public and private burdens, and debts whatever, with which they shall be affected at the term of whitsunday next to come, being the period of time from which their respective possessions do begin. They also make and constitute, each of them the other, his cessionaries and assignees, in and to all and singular charters, &c. and in and to the rents, &c. (And so forth as to the delivery of the writings, the precept of seisin, and the other clauses.)

Some writers insert in such contracts, a provision concerning the eviction of the land, but such is not necessary, because recourse upon one another's land, in case of eviction, is implied and granted by the law itself, as already mentioned.

HERITABLE BOND *on a LAND ESTATE.*

I A. B. heritable proprietor of C. grant me to have borrowed and received from D. E. merchant in F. the sum of one thousand pounds lawful money, of which I discharge him; and I bind and oblige myself, and my heirs and executors to pay
and

and again deliver the said sum to the said D. E. or his heirs or assignees, at the term of whitsunday next, with two hundred pounds, lawful money, of penalty and expence, in case of failure, and the legal interest of the said principal sum, yearly at whitsunday, during the nonpayment thereof. Without prejudice of personal diligence hereupon, notwithstanding the infestment which may follow on this deed. And in further security of the said money, I bind and oblige myself and my successors, upon our own expence, to vest and seise the said D. E. and his heirs or assignees, in an annual rent of fifty pounds lawful money, or in any other annual rent, by law corresponding with the foresaid principal sum, yearly to be uplifted at whitsunday, out of all and whole my lands and estate of G. with the pertinents, lying in the parish of H. and shire of I. and at present possessed by myself and my tenants; or out of any part of the rents and profits of the said estate, also to vest and seise them in the ground right and property of the said estate. And this by two infestments, and manners of holding. One thereof to be holden of me and my successors, and the other, to be holden from me and them, of our immediate superiors of the said estate, and both in free blanch, for payment yearly of a farthing, lawful money, at the term of whitsunday, in name of blanch farm, if it be asked only. And for accomplishing the said infestment by *resignation*, I make and constitute *my lawful procurators*, for me to resign and surrender, as I now resign, give up and surrender, the said annual rent of fifty pounds lawful money, or any other annual rent by law corresponding with the said principal sum of one thousand pounds, yearly to be uplifted at whitsunday, out of the said land and estate with the pertinents, and also the ground right and property of the said estate, during the nonredemption thereof, *into the hands* of my immediate lawful superior of the said estate, at the time, or of his commissioner, having power to receive resignations in his name, *in favour* of the said D. E. and for new infestment of the same to be made and granted to him, and his heirs and assignees, heritably; but under reversion as after specified,

in

in due and competent form. And thereupon, instruments and documents, to call for and receive, and to do every other thing which I might do if present, and which I will hold firm and stable without revocation. And I bind and oblige myself and my successors to warrant and maintain the said annual rent and the land out of which the same is upliftable, to be safe and sure to the said D. E. and his above named, at all hands, during the non-redemption. And if he hold the said annual rent of me, I bind myself and my aforesaid to enter and receive him and his successors, vassals to me therein without any payment or composition for the same; hereby assigning and disposing to them all casualties that shall happen to fall into the hands of me or my foresaid, as superiors of the said annual rent, during the nonredemption. And I make and constitute the said D. E. and his foresaid, my cessionaries and assignees, in and to as much of the readiest of the rents and profits of my said estate, as will pay the foresaid annual rent yearly. And I bind myself and my aforesaid to warrant the same to him and his foresaid, at all hands, and in every event. I also declare, that though the said D. E. use execution, both personal and real upon this deed, yet the said infestment shall not be hurt thereby, but shall continue effectual till the money above mentioned be paid. *Moreover*, I desire and empower you

and each of you my bailies specially constituted, to pass and give heritable state and seisin, with real, actual, and corpora lpossession of the said annual rent of fifty pounds, or any other legal annual rent, corresponding with the foresaid principal sum, yearly to be uplifted at whitfunday, out of my said land and estate with the pertinents, or out of the rents and profits thereof; also of the ground right and property of the said estate, to the said D. E. by delivering to him, or his attorney in his name, bearer hereof, earth and stone of the ground of the land, and a penny money for the annual rent, as is usual in the like case. For which this shall be your sufficient warrant. Providing always, that the said annual rent and land be redeemable by me and my foresaid, by payment to the said D. E. or his foresaid, at whitfunday next, or at any other

H

term

term of martinmas or whitsunday thereafter, of the said principal sum of one thousand pounds, and the interest thereof, and as much of the penalty incurred, as will pay any necessary expences he shall be put to, for his security and payment in this matter, upon our giving a previous notice of one month, that we are to make such payment. Then follows the clause of registration for horning on six days charge, and other execution as accords. And the clause of subscription.

On considering the parts of this bond, we find that it consists of, 1st, a personal obligation for the money, 2d a declaration that personal diligence may be done notwithstanding the infeftment to follow. 3d an obligation to infeft in the annual rent, and in the land; and the holding. 4th a procuratory of resignation. 5th a clause of absolute warranty. 6th an obligation to enter the creditor vassal to the debtor without any payment; also a disposition of the casualties of superiority to him. 7th an assignation to as much of the rents as will pay the annual rent. 8th a declaration, that personal execution shall not hurt the infeftment. 9th a precept of seisin. 10th a clause of redemption. 11th the clause of registration. 12th the clause of subscription. And whoever considers the whole and its parts, can be at no loss to frame a deed of this kind, on any occasion.

Such deeds are completed by infeftment, and in consequence of this, the creditor has right to an action of mails and duties and of poinding the ground against the tenants, or possessors, for payment of his interest. The proprietor is also called in this action for his interest.

Sometimes, instead of a heritable bond, the creditor gets a redeemable disposition of the land for security and payment of his money, which is much the same thing as the bond. And if the debtor do not pay, the creditor may adjudge the land before the court of session, even as he may do, when there is no such bond for his payment. But the prior heritable securities, with adjudications upon them are always preferred before posterior personal securities, with their adjudications. And adjudications upon equal grounds of personal debts, and within a year of one another, are preferred equally.

FORM of a DECREEE of ADJUDICATION.

At Edinburgh the eight day of March 1786. Anent the summons and action of adjudication pursued before the lords of council and session, at the instance of A. B. Merchant in C. against D. E. of F. Which summons maketh mention that upon the 12th of March 1783, the said A. B. obtained decreet at his instance before the sheriff of H. against the said D. E. for payment of one thousand pounds lawful money, contained in the said D. E's bond to him, dated, &c. as the said bond and decreet more fully bear. *And albeit* the said sums of money, principal, interest and expences, are all yet resting unpaid, and that the pursuer has often required the said D. E. to have made payment to him, yet he refuses so to do. *Wherefore*, necessary it is for the pursuer, in terms of the act of parliament 1672, entitled, Act Concerning Adjudications, that such parts of the lands and others, after specified, pertaining heritably to the said D. E. ought and should be adjudged by decreet of the lords of council and session, and declared to belong to the pursuer, his heirs and assignees, as shall be worth, and will pay him the said sums of money, principal, interest and expences, and a fifth part more, in respect he will thereby want the use of his money, and will be obliged to take land for the same. And that over and above the composition to the superior, and expences of infestment. And probation ought and should be led anent the rental and value of the lands so to be adjudged, in manner specified in the said act of parliament. Also the said defender ought and should be decerned and ordained by decreet foresaid, to exhibit and produce before the lords, the whole writs and evidences, both old and new of the said lands, that the said lords may determine, whether the right be sufficient, and the progress full and complete, and what warrandice the said defender shall be liable in to the pursuer. And in case the right be good, and the progress complete, the said defender ought and should be decerned by decreet foresaid, to purge all real incumbrances on the said lands to be adjudged, and to deliver to the pursuer the princi-

pal writs and evidences of the same, or sufficient judicial transsumpts, to the extent of a legal progress, and to ratify the said decret of adjudication, renounce the possession of the said lands, and observe what else is prescribed by the said act of parliament. *Or otherwise*, all and singular the lands and others after specified, pertaining heritably or otherwise to the said defender, his predecessors or authors, viz. *all* and *whole* (here the lands are particularly described) and all other right, title and interest whatsoever, with all and sundry contracts, dispositions, charters, procuratories and instruments of seisin, tacks and rights of tiends, decreets of plat, prorogation and valuation thereof, and all other writs, evidents, rights, titles and securities whatsoever, of and concerning the said lands and others, ought and should be adjudged from the said defender, and decerned and declared by decret of the said lords, to belong to the pursuer, his heirs and assignees, heritably, towards payment and satisfaction to them of the foresaid sums, principal, interest and expences, as the same shall be extended, when accumulated at the date of the decree to follow hereon, *salvo justo calculo*, and towards payment and satisfaction of the interest of such accumulated sum, during the non-redemption, over and above the composition to the superiors, and expences of infestment to follow upon the said decret. And the pursuer and his foresaid ought and should be ordained to be infested, and seised in the lands and others foresaid, to be holden by them of the immediate lawful superior thereof, as fully in all respects, as the said defender, or his predecessors held, hold or might have held the same. And letters of horning ought and should be directed for that effect against the said superiors if they be subjects. *And anent* the citation, &c. as in the said summons and execution thereof at length is contained. The said A. B. pursuer compearing, &c. produced, &c. And the said D. E. compearing, &c. the lords of council and session, have adjudged, decerned, and declared, and hereby ajudge, &c. (here the land or subject is repeated,) to pertain and belong to the said A. B. pursuer and his heirs and assignees, heritably, for and in payment and satisfaction to him, and his
fore said

foresaid of the sums of money before and after specified, viz. (here the sums are repeated.) Extending the said sums, and a fifth part, in whole, at the date hereof, to the accumulated sum of , *salvo justo calculo*. And of the due and ordinary annual rent of the said accumulated sum, from and after the date hereof, during the non-payment and redemption, and that over and above the composition to the superiors, and expences of infeftment to follow hereupon. And they decerned and ordained, and hereby decern and ordain the superiors of the said heritable subjects, to infeft and seise the said pursuer, and his foresaid therein, to be holden of them, as fully and freely in all respects, as the said defender and his predecessors held, hold, or might have holden the same. After the form and tenor of the writs and act of parliament libelled on, and conclusion of the said, summons in all points. *Because*, &c. (here the reasons, and pleadings, if any be, are narrated.) *And so* the said lords gave and pronounced decret and sentence in the said matter, adjudging, decerning and declaring in manner above written. And they ordained letters of horning on a charge of twenty one days, and other executorial needful, to pass and be directed hereupon, against the superiors of the foresaid subjects, for infefting the said A. B. pursuer, and his foresaid therein, in form as afores. Of which decret of adjudication, there are two abbreviates, both subscribed by Lord Ordinary, pronouncer hereof, to be recorded in the bill chamber, in place of the allowances formerly in use, conformable to the articles of regulation, and acts of sederunt made thereanent.

Adjudications are also completed by infeftment, if the subject of them requires infeftment, such as land, &c. And if the subject be a tenement within a royal borough, the magistrates of the borough give infeftment upon the decret without more ado. But if the subject be land in the country, the adjudger gives the superior a charge of horning, to receive him as vassal in the land. Upon which the superior grants the adjudger a charter of adjudication, in the following form, or one to the same purpose.

Charter

CHARTER of ADJUDICATION.

To all men, who shall see or read this charter. Know ye that I, A. B. of C. superior of the lands aftermentioned, have in obedience to a charge of horning, given me at the instance of D. E. of F. granted and disposed, and I *do* hereby give, *grant* and *dispose* to the said D. E. and his heirs and assignees heritably, but redeemable and under reversion, according to the act of parliament in this behalf, all and singular (here the lands and others are to be inserted, as they are mentioned in the decret of adjudication.) Which lands and others before mentioned, pertained to G. H. of I, and were adjudged from him to the said D. E, by a decret of the lords of council and session, at the instance of the said D. E, against him dated , in payment of the total, accumulated sum of , and the interest thereof from the date of the decret till payment. *To be holden* the said lands and others of me and my heirs and successors, by the said D. E. and his heirs or assignees, in feu farm and heritage, until they are redeemed, with all the privileges, profits and issues of the same. *For payment* and performance to us, of the feuduty and prestations, which are contained in the writings of the said lands, and which have been usually paid. *Moreover*, I desire and empower you

and each of you my bailies, to this effect specially constituted, to pass and deliver to the said D. E. heritable state and seisin, real, actual and corporal possession, of all and singular the lands and others before specified, by delivering to him, or his attorney in his name, bearer hereof, a little earth and stone of the ground of the said lands, as the custom is in such cases. Which to do I fully empower you by this precept. In witness whereof, &c. In common form.

Adjudications are either special, and redeemable in five years, or they are general, and redeemable in ten years after their date. By the first, such part of the debtor's lands, is to be adjudged, as is equal to the principal sum, and interest, with the composition to the superior, and expences of infestment

ment, and a fifth part more. The debtor must deliver to the creditor a right of the lands, renounce the possession, and ratify the adjudication. The adjudger is not obliged to account for the surplus rents, and after possession attained, he can use no farther execution against the debtor, unless the lands be evicted, or taken from him in course of law.

A general adjudication takes place of all the debtor's lands, when he does not produce a right, renounce the possession, and ratify the decree for a part of his lands. The creditor must limit his claim to the principal sum, interest and penalty, without a fifth part more.

After a creditor has established his right by an adjudication and infeftment, he may sell and convey the same to a purchaser in the following manner.

DISPOSITION *of an* ADJUDICATION *and* INFESTMENT.

Know all men from me A. B. of C. proprietor of the subject after disposed. Whereas D. E. of F. by his heritable bond dated bound and obliged himself and his successors, to pay to me at whitsunday thereafter, the sum of one thousand ponnnds, lawful money, with two hundred pounds in case of failure, and the legal interest of the principal sum, from the date of the bond till payment. As the bond itself more fully bears. Upon which bond I commenced a process of adjudication, before the lords of council and session, against the said D. E. in which I obtained a decree, adjudging the property of all and whole his land and estate of H. (here transcribe the lands and others from the decree), to pertain to me or my assignees, in payment of the said principal sum, interest and penalty, which were extended at the date of the said decree to the sum of , and of the interest of this accumulated sum, from that time during the non-redemption, beside the composition to the superiors, and the expence of infeftment. As the said decreet of adjudication, and the registered abbreviate thereof, dated more fully bear. Upon which I obtained from I. K. superior of the said estate, a charter of adjudication dated , and

and in consequence thereof, I was on the infested and seised in the foresaid lands and others. As the instrument of seisin, at greater length sets forth. *And seeing* L. M. of N. hath made payment to me of a sum of money, with which I am satisfied, and of which he is hereby discharged, therefore I have sold and disposed, and I do hereby *sell* and *dispose* to the said L. M. and his heirs and assignees, heritably, but under reversion, in terms of the act of Parliament in this behalf, all and singular the foresaid lands and estate of H, &c. Together with all right and interest which I have or may claim to the same. Further, I bind myself and my heirs and successors, to vest and seise the said L. M. and his above named, on their own expences, in the aforesaid lands and others with the pertinents, and this by two several infeftments, &c. And for expeding the said infeftment by resignation, (here insert a procuratory of resignation, in common form.) *Moreover*, I cede and assign to the said L. M. and his foresaid, the said extended sum of with the annual rents thereof remaining unpaid since the term of , and in time to come, during the non payment, also the said bond, decree of adjudication and abbreviate thereof, with the infeftment following thereon, and all that hath followed or may follow on the premises. Also the rents and profits of the said lands from the foresaid term of , during the non-redemption. With full power to him, to do every thing in the premises, as fully and freely, as I might have done myself before granting this deed. And I bind myself and my successors to warrant and maintain all the subjects above conveyed to the said L. M. and his before-named from my own fact and deed. Then follows the delivery of the writings, the precept of seisin, the clause of registration, and of subscription, in common form.

This conveyance or transmission ought also to be completed by infeftment, and after the same manner an infeftment on an heritable bond, is made over to another.

But if a charter, or disposition of lands, or an heritable bond or adjudication, is to be sold and conveyed, before infeftment is taken upon either of them, they are transmitted by a deed

deed called, a disposition and assignation. The granter is called the cedent; the receiver, is named the assignee or cessionary.

ASSIGNATION of a CHARTER before SEISIN has passed upon it.

Know all men from me A. B. of C. as having right in manner aftermentioned. Whereas D. E. superior of the lands and others underwritten, hath, by a charter dated granted and disponed to me, my heirs and assignees, all and whole the lands and others after specified, with the pertinents, to be holden of him, his heirs and successors, by the tenure therein expressed, as the charter, containing a clause of absolute warranty, a precept of seisin, and divers other clauses, more fully bears. And seeing F. G. hath paid to me a sum of money, as the price of the subject after specified, of which I discharge him therefore I have sold and disponed, and I do hereby, under the burden of the feu-duty and prestations specified in the said charter, sell and dispose to the said F. G. and his heirs and assignees whomsoever, absolutely and irredeemably, all and whole (here write down the lands, &c, from the dispositive clause of the charter,) together with all right and interest, &c. Moreover I hereby make and constitute the said F. G. and his heirs or assignees, my cessionaries and assignees, in and to the said charter itself, and all the clauses thereof, with all that hath followed, or may follow upon it; also to the rents and profits of the lands and others from term of in all time to come. With power to him and his above named, in virtue of the precept of seisin in the said charter, and of this assignation, to obtain themselves vested and seised, in the said lands and others, to uplift the rents and duties, and to do every other thing relative to these matters, which I might have done myself before granting this deed. And I bind and oblige myself to warrant this disposition and assignation to the said F. G. and his above named, against all facts and deeds, done or to be done by me in prejudice thereof. And I have herewith delivered up to

I

him

him the foresaid charter as his own evidence in time to come. The clause of registration and of subscription, in common form.

After the same manner, is formed an assignation of a disposition of lands before infestment on it.

ASSIGNATION of an HERITABLE BOND.

Know all men from me A. B. of C. as having right in manner after specified. Whereas D. E. of F. by his heritable bond, dated bound and obliged himself his heirs and successors to pay me, my heirs or assignees, the principal sum of at the term of thereafter, and the sum of of liquidate penalty and expence in case of failure, with the legal interest of the principal sum at whitsunday yearly; and for farther security, he likewise bound himself and his above named, on the condition after specified, to vest and seise me and mine afore said, in an annual rent of , or any other legal annuity corresponding with the said principal sum, to be uplifted at whitsunday yearly, forth of the lands and others after specified. As the said bond more fully bears. And seeing G. H. merchant in I. hath paid me a sum of money in consideration of the money and security above and aftermentioned, with which I am satisfied, and of which I discharge him; Therefore I have sold and disposed, and I do hereby sell and dispose to the said G. H. his heirs or assignees, heritably, but under reversion as aftermentioned, all and whole the foresaid annual rent of , or such an annual rent less or more, as by law shall be answerable to the foresaid principal sum of , yearly to be uplifted at whitsunday, out of all and singular (here transcribe the lands from the heritable bond,) or out of any part thereof, or of the readiest rents and profits of the same; also the ground right and property of the said lands and others themselves; and all right and interest which I have or may claim in the said subjects, during the non-redemption, I also cede and assign to the said G. H. and his heirs or assignees, the foresaid principal sum of , and the sum of of liquidate penalty, with the annual rent of the principal

principal sum since the same became due, and in time to come; likewise the foresaid bond itself, the procuratory of resignation, precept of feisin, clause of absolute warranty, and the whole other articles therein, with all that hath followed, or may follow on the said bond. With full power to the said G. H. and his foresaid, to do every thing in the premises, which I might have done myself before granting this deed, particularly, to procure himself infefted and seised in the foresaid annual rent, by virtue of the procuratory of resignation, or precept of feisin in the said bond, and of this assignation of the same. *Provided* however, that the foresaid annual rent and lands be redeemable, and under reversion from the said G. H. and his above named, on the terms prescribed by the said heritable bond. And I bind and oblige myself and my successors to warrant the said annual rent and lands, and this disposition to the said G. H. and his above named from every fact and deed of mine, done or to be done in prejudice hereof. *Moreover*, I have herewith delivered up to the said G. H. the the foresaid heritable bond as his own evidence in time to come. Clause of registration, and of subscription in common form.

After the same manner, may be formed an assignation of a decree of adjudication, before infeftment be taken on it; but all these assignations should be completed by infeftment without delay, in order to make the assignee secure, both against the debtor and the cedent.

When a heritable debt, or annual rent is paid, it comes to be discharged, the form of which is this.

DISCHARGE and RENUNCIATION of an HERITABLE DEBT.

Know all men from me A. B. of C. as having right in manner aftermentioned. Whereas D. E. of F. granted me an heritable bond, dated [blank] Whereby he bound himself to pay me the sum of [blank] lawful money at whitsunday thereafter, with a fifth part more of penalty in case of failure, and the interest of the principal sum from the date of the bond till pay-

ment, And in farther security he bound himself to infest me in an annual rent of corresponding by law to the said principal sum, to be uplifted and taken yearly at whitfunday, out of his lands of , also to infest me in the lands themselves. For which end he granted a precept of seisin. As the said bond, containing divers other clauses, more fully bears. Upon which bond, I was duly infested in the said annual rent and lands conformable to the instrument of seisin in my favour, dated and duly recorded. *And seeing* the said D. E. hath paid to me the foresaid principal sum of , with the whole interest thereof, and the expence of infestment, with which I am satisfied, *Therefore* I have exonerated and discharged, and do hereby exoner, acquit and absolutely discharge the said D. E. and his heirs and executors; of the said principal sum and the interest thereof, with the penalty, and the expence of infestment, and also of the said heritable bond itself, with the instrument of seisin thereon, and all that has followed, or may follow upon the same, now and for ever. I likewise acknowledge that the said annual rent and lands are duly redeemed, and that the lands are freed and relieved of the said infestment; therefore I renounce and overgive the said infestment, lands and annual rent, with all right and interest which I have, or that my successors may claim to the whole or any part thereof, to and in favour of the said D. E. and his successors in time to come. Which discharge and renunciation, I bind and oblige myself and my heirs and executors to warrant and maintain to the said D. E. and his above named, at all hands, and in every event. And I have herewith delivered up to him the said bond and instrument of seisin as his own writings in all time hereafter. And I consent to the registration hereof, in the books of council and session, the register of seisions, reversions, &c. for the shire of , or others competent for preservation and publication, and to receive execution on the warrantice, as aforesaid, appointing for that end, &c. in common form.

This deed ought to be registered in terms of the clause of registration, within sixty days after the date of it, which finishes the affair.

When

When a proprietor of land is desirous to have his tenants warned to remove in form of law, he may do this either by a precept of warning, as the act of parliament in the year 1555, c. 39, directs; or as the act of sederunt of the court of session, in the year 1756 doth prescribe. If he is to proceed in the way of the act of parliament, the form of the precept is to this purpose, written on common paper.

PRECEPT of WARNING for TENANTS.

A. B. of C. heritable proprietor of the lands and others aforementioned, to

and each of you, executors hereof, specially constituted for this purpose, greeting. I desire and empower you, to pass forty days before the term of whitsunday next, and lawfully warn the persons following, pretended tenants and possessors of the said lands and others, *viz.* (here insert the names of the tenants and of their possessions distinctly) all within the parish of D. to flit and remove themselves, their families, subtenants, goods, and gear, from the said lands and others, and to leave the same rid and patent at the term of michaelmas next, each of them for his own part. To the effect, that I, or others in my name, may enter to the possession of the same, and enjoy the whole as my own heritage in time to come. Certifying them, if they continue to occupy and possess the said lands and others, after michaelmas, they shall be holden as violent possessors, and be prosecuted for violent profits, according to justice. For doing which, this shall be your sufficient warrant. In witness whereof I have subscribed this precept, which is written by myself, at C. the day of before these witnesses.

It should be observed, that such a precept should be executed by delivering a copy, in form, to each of the tenants, personally, or at his house, and by leaving a copy on the ground. Also by going to the parish church, at the dismissing of the congregation in the forenoon, reading the precept and leaving

leaving a copy upon the church door, forty days before whitsunday.

An example of a short copy for the tenant and of the execution of the precept, is here set down.

COPY for the TENANT.

I D. E. officer, by virtue of a precept of warning, subscribed by A. B. of C. proprietor of the lands aftermentioned, dated and delivered to me, of which the above is a copy, do hereby warn you F. G. tenant in H. to flit and remove yourself, your family, subtenants, goods, and gear, from (here insert the lands, as mentioned in the precept) and to leave the same rid and patent at the term of michaelmas next to the effect, and under the certification mentioned in the said precept. This I do upon the day of March 1786, before these witnesses.

EXECUTION of the said PRECEPT.

Upon the day of March one thousand seven hundred and eighty six, I D. E. officer, by virtue of the within precept of warning, passed to the dwelling-houses of the within designed tenants of A. B. of C. and also to the ground of their lands, and lawfully warned each of them to remove from his respective lands and possessions, with his family, subtenants, goods and gear, and to leave the same rid and patent at michaelmas next, to the effect and under certification, mentioned in the said precept. And also upon the day of March and year foresaid, being sabbath, I passed to the parish kirk of , within which parish the said lands do ly, and at the most patent door thereof, while the congregation was dismissing in the forenoon, after crying three oyeses, I read and published the said precept, in the audience of the people convened thereat, and made certification as is within mentioned. This I did conformable to the said precept, and to the act of Parliament in this behalf, in all points, by delivering a copy of

of the said precept, with a short copy thereto subjoined, and subscribed by me, to each of the said tenants personally apprehended, and by leaving the like copy upon the ground of each of their possessions, and by affixing and leaving the like copy upon the most patent door of the said church. Which copies contained the respective dates hereof, with the names and designations of the witnesses who were present thereat, and who do hereto subscribe with me, viz. F. G. and H. I. both in C. D. E.

F. G. witness.

H. I. witness.

Upon this warning, if the tenants refuse to remove, the proprietor will get an action of removing.

But if the proprietor is to proceed against his tenants according to the act of sederunt in the year 1756, he may order a summons to the following effect.

LABELLED SUMMONS of REMOVING against TENANTS.

A. B. Esquire, sheriff depute of the shire of C. to
messengers
and mairs, jointly and severally, specially constituted, greeting.
Whereas it is complained to me by D. E. of F. proprietor of the lands and farms aftermentioned, that G. H. tenant in I. and K. L. tenant in M. pretend to hold the said possessions and farms against the complainers will, and refuse to flit and remove themselves therefrom; which obliges him to apply in this manner. Therefore the said G. H. and K. L. should be decerned and ordained, each of them for his own part, to flit and remove themselves, their families, subtenants, goods and gear, forth and from their occupation and possession of their respective lands, houses and pertinents at the term of michaelmas next, and to leave the whole rid and patent to the complainer, that he may then enter thereto, and enjoy the same as his own heritage in time to come; in terms of the act of sederunt in this behalf, made in the year 1756. Also to pay the complainer's expences. According to justice. As is alledged.
Therefore

Therefore it is my will, and I charge you to summon the persons, defenders above named, personally or at their dwelling-houses, to appear before me in the sheriff court of C. the day of next, at the hour of cause, to answer at the instance of the said complainer, and to the points of his libel above specified, in order to be decerned conformable thereto, or to show cause for the contrary, with certification. Given under the hand of my clerk of court at C. the day of one thousand seven hundred and eighty six.

Such a summons as this, is first signed by the sheriff clerk, and then it is executed by delivering a copy of it to the will, with a short copy subscribed by the officer, before witnesses. It must be called in the court forty days before whitsunday, whether that term, or a term after it, be the term of removing.

And it may be observed, that in warnings from tenements within a royal borough, it is sufficient that the tenant be warned forty days before the end of the tack, whether it be whitsunday or martinmas. And in these, the ceremony of chalking the door, by an officer, on an order from the proprietor, is sustained as warning, without the warrant of a magistrate.

Where a tenant in the country, is bound by his tack, to remove at the end of it without warning, the proprietor may charge him by horning, forty days before whitsunday, to remove, and eject him within six days after the term of removing fixed in the tack.

A landlord may remove tenants, where tacks or possessions flow immediately from himself, without producing any title, but if the tenants are not his own, he must be infefted in the land before the date of the precept of warning. Only an heir may warn a tenant to remove, in the right of apparencey, but he must be infefted before the summons of removing.

A tenant continuing to possess after the term is liable for violent profits. These are double the rent in tenements within borough, and the highest profits which the proprietor could have made of the lands, by himself or his tenant, in the country.

The

The landlord has in security of his tack duty, a tacit pledge or hypothec in the fruits of the farm, and in the cattle pasturing on the ground. The corns and other fruits remain affected for the rent of that year, whereof they are the crop, tho' the landlord should not use his right for year's together. He may retain the corns, before the term of payment, against a pouding creditor, until he get security for that years rent. But after the term, he cannot stop a pouding, if sufficiency of corns be left for the rent; because he can instantly make them his own. And he may, without the authority of a judge, bring back the corns, if he uses his right immediately; otherwise he must apply by a common process. He has three months from the last term of payment, to apply his preferable right for payment of the past year's rent.

In tacks of houses, breweries, shops and other tenements, which have no natural fruits, the furniture and other goods brought into the subject set, are hypothecated to the landlord for one year's rent.

And in all cases, where the landlord has good reason to suspect his tenants management, he may by sequestration or pouding, make his right special on the cattle or goods, which was before general, upon the whole flock.

A TACK or LEASE *between a LANDLORD and TENANT.*

It is agreed and contracted between A. B. of C. proprietor of the subject after specified on the one part, and D. E. farmer in F. as tenant, on the other part, to the following effect. The said A. B. hath set, and for the tack duty, and other prestations aftermentioned, he hereby sets, and lets out to the said D. E. and his heirs, subtenants and assignees, all and whole that the said A. B.'s farm of G. lying in the parish of H.; including the arable land, grass ground, houses and pertinents, as the same are now possessed by I. K. tenant thereof. And this for thirty eight years from and after michaelmas next, or the separation of the ensuing crop from the ground, which is to be the term of the said D. E.'s entry to the possession of the subject. And the said A. B. binds himself and his successors, to

warrant and maintain this tack or lease, and the said possession, to the said D. E. and his above named, at all hands, and in every event. *For which causes*, and on the other part, the said D. E. binds himself and his foresaid to pay to the said A. B. and his successors, the sum of one hundred pounds, lawful money, and to deliver to him thirty bolls of oat meal and thirty bolls of barley, of yearly rent and tack duty for the said farm and possession. The money at whitsunday, and the meal and barley between the fifteenth day of January and candlemas after reaping the crop each year. Beginning the first payment of the money at whitsunday one thousand seven hundred and eighty eight, and the first delivery of the meal and barley in January that year for the crop one thousand seven hundred and eighty seven. With the legal interest of the money, and the highest price current in the country, beside other damages for the meal and barley, in case of the non-payment and non-delivery at each term yearly. And the parties agree that the whole houses and fences of the inclosures on the said farm, shall be inspected and appraised, by neutral men at the tenants entry, and put into a habitable and proper condition by the proprietor. And that they shall be also inspected and appraised by neutral men at the end of this tack, and the tenant and his above named shall be answerable, and liable for the deficiency, which may then happen to be on the whole, to the proprietor. And the tenant becomes bound to leave the whole land of the said possession in good heart and condition, and two fifth parts thereof under sown grass, not above two years old. And the tenant further binds himself, and his foresaid, to flit and remove himself, and every thing belonging to him, from the possession of the said farm and pertinents, at the end of this tack, without any warning, or process of removing for that purpose. And both parties bind themselves to perform their several parts of the premises to one another, under the penalty of fifty pounds sterling, to be paid by the failer to the other party, over and beside performance. And they consent to the registration hereof in the books of council and session or others competent

competent, that horning on six days charge, and other execution as aforesaid may pass hereon, appointing for that end

Their

procurators, *In witness* whereof, this deed, written upon this and the two preceding pages of stamped paper, by O. P. writer in Q. is subscribed by both parties at W. the day of before these witnesses.

Both parties subscribe such a contract on each page, and the witnesses on the last page. The parts of which this tack or contract consists, are evidently; 1st, the names and designations of the parties; 2nd, the set of the subject to the tenant; 3d, the absolute warranty of the tack and possession; 4th, the obligation to pay the specified rent; 5th, the other prestations due by the tenant; 6th, the obligation of both parties to perform under the penalty; 7th, the clause of registration; 8th, the clause of subscription.

Hence we see that a tack is a contract of location, whereby the use of land, or immoveable subjects, is set to the tacksmen, lessee, or tenant for a yearly rent. It ought to be in writing, if for more than one year, as verbal tacks are not valid in law against either party for more than a year. An obligation to grant a tack, or even a minute of tack on common paper, when possession is attained thereon, is as effectual as a formal tack.

The tacksmen has right to the fruits which, spring up yearly from the subject set, but not to the growing wood above ground, or to the minerals, coal, clay, &c. under ground. And he is entitled to the possession of the subject, for the full time of the tack, whoever is the proprietor.

If the tack duty is payable to a creditor of the proprietor, or to be retained by the tenant for a debt due to himself, this is not valid against singular successors, who may claim the whole. Tacks are strictly interpreted, therefore the conveyance of a tack, which is not granted to assignees, is not good, tho' it may be adjudged by creditors. And a woman's right of a tack falls under the husband's power. But liferent tacks may be assigned, and they do not fall by marriage. But even those as well as other tacks, if they exclude assignees, cannot be either

assigned, or adjudged. However, all such tacks may be sublet.

Tacks may be evacuated during their currency, by the tenants running in arrear of his tack duty for two years; and this irritancy is triable before the judge ordinary. And when the tenant either runs in arrear of one year's rent, or leaves his farm uncultivated at the usual season, he may be ordained by the judge ordinary to give security for the arrear, and the rent of the five following crops, or to remove.

ASSIGNATION *of the FOREGOING TACK.*

Know all men from me D. E. farmer in G. Whereas A. B. of C. by a tack between him and me dated , did set and let out to me and my assignees, &c. his said farm of G. lying in the parish of H. including the arable land, grass ground, houses and pertinents; and this for thirty eight years from michaelmas then next, the term of my entry to the possession. And he bound himself to warrant the said tack and the possession to me, at all hands. For payment of one hundred pounds lawful money, and delivering thirty bolls of oat-meal, and thirty bolls of barley, of yearly rent for the said farm and possession. And for performance of the other prestations therein mentioned. As the said tack containing other clauses, more fully bears. And seeing L. M. farmer in O. hath paid to me a sum of money, in consideration of this conveyance, of which I discharge him, therefore I do hereby cede and assign to him, and his heirs and assignees, the said tack during all the years thereof yet to run, from and after this term of michaelmas, and the farm or possession thereby set, with all the issues and profits of the same; with full power to him, and them, to hold and possess the said farm, and to do every thing in the whole matter that I might have done before granting this deed. But providing that the said L. M. and his fore-said be bound and obliged, to pay to the said A. B. and his successors, the tack duty, and perform the other prestations, and obligations contained in the said tack, and relieve me, and my fore-said thereof, in time to come. And I bind myself and my
successors

successors to warrant this assignation to the said L. M. and his above named, from my own fact and deed, and to pay and clear all the duties incumbent on me by the said tack, preceding the date hereof. And I have herewith delivered to him, my duplicate of the tack, as his own writing in time to come. And I consent to the registration hereof in the books of council and session or others competent for preservation, and to receive execution on the warrandice as asseres, &c. in common form.

If the tacksmen intends to sublet his farm, or part of it, instead of assigning the tack, he enters into a contract of sublet, which proceeds in much the same form with the principal tack. Only the rent is generally taken payable to the tacksmen himself, but sometimes, it is made payable to the proprietor.

In case of an assignation, the assignee is taken bound to pay immediately to the proprietor; but in the case of a sublet and subtack, the subtenant is also liable to the landlord for all the rent he has not paid to the principal tacksmen. And he may be interpellated from paying to the tacksmen, by a protest, or process at the land lord's instance.

When a proprietor of land intends to sell his estate, he gives public notice of it, and holds a roup or auction of it. On such an occasion, articles of roup are formed, of which the following is an example.

ARTICLES of ROUP of LAND on STAMPED PAPER.

Articles and conditions of the roup and sale of the land and estate of A. with the fishing, mill, and whole privileges and pertinents, lying in the parish of B. and belonging to C. D. of A. and also possessed by him and his tenants.

The said lands and estate are exposed, and set up to public sale, by the said C. D. after due advertisement thereof on the following conditions.

The upset price of the said subjects is to be two thousand pounds lawful money, and this being offered, every succeeding offer is to advance by five pounds at the least. And every offerer is to sign his offer if he be desired, but though the same
be

be not signed, it shall be binding in every respect, as it is taken down by the clerk of the roup.

The judge of the roup is to have the sole power, of setting the time for the continuance of the roup, and the person who makes the last or highest offer for the subject within the limited time, is to be preferred to the purchase.

The price, or purchase money is to be payable at whitfunday next, and the person preferred, is to become bound with a cautioner for payment of the money, with a fifth part more of penalty, in case of failure, and the interest of the principal sum till payment. Which caution he is to produce to the exposers's satisfaction, within six days after the roup. And if he fail to do so, he shall thereby not only forfeit the purchase, but also a fifth part of the purchase money, of damages to the exposers.

And in the case of the highest offerer failing to find caution as above, the next highest offerer shall be bound in the same manner, and under the same forfeiture, at his own offer. And so on backward, all the rest of the offerers in their order.

The purchaser's entry to the possession of the said lands and estate, is to be at the said term of whitfunday next, at which time the exposers and proprietor is to have the same cleared and relieved of all public and private debts and burdens, and he is to deliver to the purchaser a proper conveyance of the said estate, and pertinents, with absolute warranty, and a sufficient progress of writs for forty years back.

D. E. of G. is hereby appointed judge of the roup, with full power to chuse his own clerk, and to hear and determine finally in every thing concerning the same. And all parties are to be understood, and held to stand by and fulfil his sentence, without any objection. And the said C. D. consents, and all the offerers are understood to consent, to the registration hereof, and of the minutes of roup and decree of sale to follow hereon, in the books of council and session, or others competent, that horning on six days charge, and other execution as afferes may pass on the same; appointing for that end

Their

procurators. In witness whereof, &c.

Minutes

MINUTES of Roup.

At P. the day of in prefence of D. E. of G. judge of the roup, appointed by the foregoing articles, who named R. S. writer in T. to be his clerk. The said articles were audibly read over to the company convened after due advertisement, and the lands and estate therein mentioned were fet up to sale, at the price, and on the terms mentioned in the said articles. Then

I. K. merchant in L. offered for the said estate, two thousand and ten pounds, lawful money.

I. K.

D. E.

And M. N. merchant in L. offered for the said estate two thousand and fifty pounds.

M. N.

D. E.

And no other person having offered more, within the time limited by the judge, he declares the said M. N. to be the highest and last offerer, and the purchaser of the said lands and estate, and prefers him accordingly. And the said M. N. accepts the purchase at the said sum of two thousand and fifty pounds, and offers P. Q. merchant in L. to be his cautioner, who becomes bound jointly and severally with the said M. N. for the said purchase money, in terms of the said articles. And the said C. D. accepts the said cautioner. And the judge ordains them all to implement their several parts of the said articles, one to another. And the parties consent to the registration of these minutes of roup and sale with the articles of roup. In witness whereof, these presents, written on this and the preceding page, of the same sheet with the articles of roup, by the said R. S. are subscribed by the said parties and judge at P. the day of before these witnesses.

It should be observed that all roups must proceed in a fair and just manner. No person authorized by the exposor, directly or indirectly, or acting with his knowledge for him, can
make

make an offer for the expositor. Such procedure would annul the roup and sale, as to all the offers after such persons offer, and subject both the expositor and his confident to damages.

It should also be noticed that there is a duty to the king upon the most part of subjects that are roup'd, and that the seller should consider, whether it is best in his circumstances, to take the burden of this himself; or to cause the buyer pay it; or to divide the duty between them.

PRESENTATION *of a MINISTER by a PATRON to a VACANT CHURCH.*

I A. B. of C. undoubted patron of the parish, and parish kirk of D. to the reverend moderator and other members of the presbytery of E. greeting. Whereas the said kirk of E. is vacant in my hands, and at my gift and presentation, by the decease of the reverend Mr F. G. late minister thereof; and I being desirous to have the same provided with a person properly qualified, and fit for the discharge of this important office; and being informed of the ability and good qualifications of Mr I. K. probationer in L. for this purpose; *therefore* I do hereby nominate and present the said Mr I. K. to the ministry of the said parish, and parish kirk of E. and to the manse, glebe, and stipend, with all the pertinents and privileges of the same, as they were possessed by the said Mr F. G. And this for the crop and year of God, one thousand seven hundred and eighty six, and every year thereafter during the said Mr I. K's incumbency there. And I desire and require you, the said moderator and other members of the aforesaid presbytery of E. to take trial of his qualifications; and he being found qualified, to admit him to the said church, and grant him institution conformable to the public law in this behalf. I also request the lords of council and session, or other judges competent, to grant letters of horning, and other executorials necessary, as aforesaid, at the instance of the said Mr I. K. for causing payment and performance to him of the said stipend, and of all

the

the pertinents, profits, and privileges of the said kirk of E. during his incumbency. In witness whereof, &c.

Such a presentation must be written on stamped paper, paying a duty for this purpose, and it is completed by the act of the presbytery, settling the presentee minister of the parish. Before the presentation is given, the patron ought to be infested, and to be qualified to government; and he ought to grant the presentation within six months after the vacancy comes in course of post, or a reasonable time, to his knowledge.

After receiving the presentation, the presentee ought to be qualified to government before his admission.

If the presentee is already a settled minister in another parish, the clause in the presentation, requiring the presbytery to take trial of him, is left out as unnecessary. But every presentation should show the manner of the vacancy; whether it was by the death, or deposition of the incumbent, or by his transportation to another church.

It may be also noticed, that ministers of parishes, not only get horning for their stipends on ten days charge, but in pointing for the stipends, they need not carry the goods to the market cross, only appraise them on the ground.

A FACTORY, or COMMISSION.

Gentlemen of considerable landed property, frequently appoint factors, to levy the rents, and do the other business of their estates, for their own convenience, and dignity; the form of which is as follows.

Be it known to all men from me A. B. of C. that I have constituted and appointed, and I do hereby make, constitute, and appointe D. E. writer and farmer in F, to be my factor, and agent, during my pleasure for the purpose aftermentioned; granting and committing to him full power and authority, for me, and in my name, and to my behoof, to demand, sue for, receive and discharge, all and sundry the rents and dutys of my estate of C. from my tenants, feuars and all possessors of my

I

lands,

lands, mills, and fishings. And this for the term of whitfunday last, and all other terms and years thereafter, during the continuance of this commission. Also to sell my victual, rent to the best advantage he can, and remove tenants, set possessions, and to grant tacks or leases of farms, after first consulting with and informing me of the terms and the persons in these matters. And to do every other thing in the premises, which I might do myself, if I were present, and which I will ratify, and hold firm and stable to all concerned. And I have herewith delivered to the said D. E. a full rental of my said estate subscribed by me, as the rule by which he is to enter on the management of my affairs. And according to which, and the authorised variations that shall ensue thereon, he is to hold count and reckoning with me. *Provided* however, that the said D. E. shall be bound and obliged to recover the said rents and duties punctually, or to do diligence for them in due time, and not to allow any prescription, or loss of privilege concerning them, to take place. And to have as few arrears after every term as possible. Also that, beside paying in the money he receives to me, or my order from time to time, he shall twice every year, at the first day of August, and the first day of February, state and settle his whole accounts of my affairs, and pay me the balance of money in his hands at those terms. The said D. E. having allowance of all the necessary and reasonable expences he shall disburse in my matters, and the sum of every half year for his trouble. And I consent to the registration hereof, &c. for preservation, and to receive execution as afferes.

Of BARONS.

A baron, is he who holds his lands of the crown, and has right to elect, or be elected a member of the house of commons. He has right to appoint bailies for holding courts, to recover his rents and mill services. But if his lands were formerly erected, or confirmed by the king, into a free barony, he has yet power to judge in other causes, where the debt and damages

damages do not exceed forty shillings sterling. He has also power to judge in assaults, batteries and other smaller offences, which may be punished by a fine, not exceeding twenty shillings, or by setting the offender in the stocks in the day time, not above three hours. The fine to be levied by poinding, or one month's imprisonment.

In consequence of this, the baron may appoint a bailie, by a writing called, a bailiary, to hold courts, and apply the law. The form of which is as follows.

A BAILIARY, or COMMISSION for a BARON BAILIE.

Know all men from me A. B. of C. that I have nominated and appointed, and I do hereby nominate, constitute and appoint D. E. of F. to be my lawful bailie, over all my lands and estate of C. with the pertinents, lying in the parish of L. and shire of M.; giving and committing to him my full power and authority, for me, and in my name, to set, fence, hold and continue a baron court, or courts, as often as shall be found necessary or expedient. And this upon the ground of my said lands and estate, or any part thereof; and therein to administer justice in all the cases to be prosecuted before him, conformable to the law and practice of Scotland, in the most impartial manner and without delay. And to carry his sentences into execution by every legal method. Also to chuse his own clerk. And in general, to do every thing in this matter, which to the office of a baron bailie doth belong. And I will ratify, and hold firm and stable, to every person concerned, all and whatsoever the said D. E. lawfully does or causes to be done in the exercise of the said office. Registration for preservation.

A baron bailie, before the act, should qualify himself to government, and cause a certificate of this to be registered by the sheriff clerk, under the penalty of 10l. and six months imprisonment.

Persons may be cited by word only before a baron court, and poindings for the rents, &c. on their decrees may be executed

ted by one appreciation upon the ground. And this without giving a previous charge to make payment.

The FORM of HOLDING a BARON COURT.

C. the 10th of June 1786. In presence of D. C. of F. baron bailie of C. The court lawfully fenced. Appeared L. M. in O. factor for A. B. of C. Esq; and produced a libel at his instance against fundry tenants of the said A. M. with an execution of a proper citation given to each of them, to appear this day. And he craved decret accordingly.

The FORM of the LIBEL.

Unto the hon. baron bailie of C. complains unto your honour L. M. in O. factor for and in the name of A. B. of C. Esq; upon the persons after named, who should be decerned and ordained to pay the complainer their rents and debts following.

I. K. tenant in L. twenty pounds lawful money, as the balance of his rent due at last whitsunday, conformable to an account therewith produced, and the interest thereof since the said term till payment.

O. P. tenant in R. thirty pounds lawful money as the balance of his rent, due at whitsunday, *per* account produced, and the interest since that time till payment.

And both the defendants to pay expences. According to justice.

C. 10th of June 1786.

Call the defendants. Which done, and no objection made, the bailie decerns, as it is called, as libelled, with of expences against each, and the expence of extracting the decret. On which, a poiding of the debtors effects will follow.

On the NONENTRY of HEIRS.

When a proprietor of land dies in debt, and his heir stands off

off from entering to him, and paying the debt, and when a year and day are past since the death; any creditor may charge the heir, on a writ under the king's signet, to enter to his ancestor, within 40 days after the charge, and be liable.

This may be done against both majors, and minors, and in the case where the heir himself is debtor, as well as his ancestor.

There are two sorts of charges to enter heir, a general charge, and a special one. The first serves only to fix the representation of the heir, so as to make the ancestor's debt his debt. A special charge makes up for the want of a service of the heir, and states, him, by a fiction of law, in the right of the subjects, to which he is charged to enter. Therefore, where the heir is debtor, a general charge for fixing the representation against him, is not necessary, since the only concern of the creditor is, that his debtor make up titles to his ancestor's estate, and this is done by a special charge. But where the deceased was the debtor, the creditor must first charge his heir to enter in general, that it may be known, whether he is to represent the debtor. If he does not enter within 40 days, the debt may be fixed against him by a decret of constitution, on which he may be charged to enter heir in special upon 40 days more, and these must be elapsed before the creditor can proceed to apprise, or adjudge the land.

But if the heir who is charged, and is prosecuted for the debt, do not chuse to enter and represent his ancestor, he gives into the process a renunciation to be heir, in a formal writing upon which no decret can pass against him personally. But it will pass *cognitionis causa*, as it is called, and this being extracted, the creditor raises a process of adjudication against the lands of the debtor. And in this case, the adjudication may be carried on before the sheriff, as well as before the court of session. The form of the renunciation to be heir, is as follows.

RENUNCIATION to be HEIR.

*Know all men from me A. B. merchant in C. eldest son, and
apparent*

apparent heir of the now deceased D. B. of F. Whereas I am now charged to enter heir in general to the said D. B. my father within 40 days, in virtue of letters for this purpose, at the instance of I. K. writer in L. to the effect, that he may pursue all actions and causes competent to him against me as heir of my father, with certification, if I fail to do so within the 40 days, the said I. K. shall have such like action and execution against me, as if I were entered, served and retoured heir to my said father, altho' I stand off, and do not enter. As the said letters of charge, and the execution thereon more fully bear. Upon which the said I. K. has executed a summons against me, in order to make me liable, as heir of my said father for the debt therein mentioned. *And seeing* I am resolved, not to enter heir to my said father, because I may incur much hurt and damage to myself thereby, *therefore* I have renounced, and I do hereby renounce to enter heir to the said D. B. my father and I quit all benefit which is or may be competent to me as heir to him. And I hereby consent that the aforesaid I. K. for himself, or as assignee from others, have all action and execution for the debts resting by my said father to him, or his constituents, or authors, *contra hereditatem jacentem, et bona mobilia* pertaining to my said father, at the time of his decease, as accords with the law. Registration for preservation.

If the heir do not mean to represent his ancestor he should do nothing to infer this on himself.

On the SERVICE of HEIRS to their ANCESTORS.

When a proprietor of land dies infested, and without having made any deed of settlement for conveying the lands to his heir, that heir must make up his title, by being served heir to his ancestor, whether it be his father, or any other. But he has a year and a day allowed him from the ancestor's decease, to deliberate, whether he will enter or not; till the expiring of which, he cannot be prosecuted for the debts of the deceased. All services of heirs proceed on brieves, or warrants in latin, from the chancery. The judge to whom the brief is directed,

is required to try the matter by an inquest of fifteen sworn men, who cannot sit, till fifteen days after the brief has been proclaimed to all and sundry, at the market cross of the head borough. The inquest, if they find the claim of the heir verified, declare him heir to the deceased, by a verdict, or service, which the judge attests. This service is not deemed complete, till it be retoured, or returned to the chancery, after which, the heir gets an extract thereof, and uses it, as he finds necessary.

The service of heirs is general, or special. The first vests the heir in the right of all heritable subjects, which do not require seisin, as reversions, bonds, secluding executors, heirship moveables, &c. Or which have not been perfected by seisin, as dispositions, heritable bonds, &c. But it carries no right cloathed with investment. The brief on which a general service proceeds, may be directed to any judge ordinary, and it must be proclaimed in the jurisdiction where it is to be served. A special service, followed by seisin, vests the heir in the right of the subjects in which the ancestor died invested. And the brief must be directed, either to the sheriff of the county, or bailies of the borough where the subjects lie. Or by warrant of the court of session, to other delegates. The proclamation of this brief must be made at the head borough where the lands lie. The style of all briefs is the same, and they contain seven heads, which the inquest is commanded to answer. The first is, whether the ancestor died at the peace of the sovereign. This is on account of the fisk, and forfeiture in case of rebellion; but the affirmative is presumed, unless rebellion be proved. The 2d head is, whether the claimant be the next and lawful heir to the deceased. The legitimacy is presumed, but the propin quity must be proved by witnesses, or writings.

In a special service, the claimant must also prove, the time of the ancestor's death, and thereby the length of the nonentry, and also, that he was invested, which his seisin shows. The 3d head is, of what superior the lands are held in capite, or immediately; 4th, by what manner of holding; 5th, what their

their extent is, both old and new; in order to fix the rate of the superior's casualties, which is governed by the new extent; and the nonentry duties to the crown, by the valuation of the lands which were formerly holden ward; 6th, whether the claimant be of lawful age. This related to the tenure of wardholding, which is abolished, and must now be answered always in the affirmative; 7th, in whose hand the fee has been since the ancestor's death? This serves to show, whether nonentry be due; for if the lands have been possessed by a tencer, or liferenter, it is excluded.

The two first are answered in a general service. And the whole in a special service. The clerk of the court, where the service is performed, makes out the claim for the heir, and all the other minutes of court, so it is not necessary to notice any more of them here.

Only a service is not required for a right in titles of honour, or offices of the highest dignity; these descend by the right of blood. Nor is it required to the levying of the rents of a land estate, or the enjoying of a tack, or any other temporary right belonging to the ancestor. A special service is completed by feisin. Where the lands hold of the crown, the chancery issues precepts for infefting the heir, directed to the sheriff of the shire. If the lands hold of a subject, the heir obtains letters of horning to charge the superior to receive him. And if the superior refuse, the heir may proceed against his superior, and so on to the sovereign, who refuses none.

If an heir is doubtful, or afraid, that his ancestor's estate is not sufficient for clearing his debts, and within the year of deliberation, exhibits upon oath, a full inventory of all his ancestor's heritable subjects, to the clerk of the shire where the lands lie; or, if there is no heritage requiring feisin, to the clerk of the shire where he died; and if after the same is subscribed, by the sheriff, the clerk and himself, and registered in the sheriff's books, the extract thereof shall be registered within forty days after the expiry of the year of deliberation, in the general register for that purpose; his subsequent entry will subject him no farther, than to the value of such inventory.

On the TERCE of WIDOWS.

The terce, or third, is a liferent competent by law to widows, who have not accepted special provisions, in the third part of the heritable subjects, in which their husbands died infefted. It takes place only where the marriage has subsisted for a year and a day; or where a child has been born of it. And it is not due out of burgage tenements, or those in a royal borough. Neither is it due out of the lands in which the husband was not infefted. It extends to tithes, to servitudes, to rights of annual rent, and other burdens affecting land; but not to rights of reversion, superiority or patronage. The widow, having a special provision from her husband, is thereby excluded from the terce, unless the provision contain a clause, that she shall have right to both.

The widows title of possession, is made up by being served to the terce, by an inquest, before the sheriff, on a brief from the chancery. She proves that she was wife to the deceased, and that he died infefted in the subjects contained in the brief. The service is not retoured to the chancery. But the sheriff kens her to her terce, or divides the lands between her and the heir, either personally, or by a precept to a bailie for that purpose. In this division, after determining by lot or cavil, whether to begin by the sun or the shade, that is, by the east or the west, the sheriff sets off the two first acres for the heir, and the third for the widow. Sometimes the division is executed, by giving one entire farm to the widow, and two of equal value to the heir. On which an instrument is taken, or required under the hand of a public notary, and this is equal to a seisin. The form of which instrument, is as follows.

INSTRUMENT *on* KENNING *a* WOMAN *to her* TERCE *of*
LAND.

At C. the day of one thousand seven hundred and eighty six, between the hours of ten forenoon and one afternoon. In presence of the notary-public, and the witnesses

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ses subscribing, appeared A. B. widow of the now deceased D. B. of C. and passed with us to the ground of the lands and estate of C. having in her hand a precept of kenning directed by the sheriff of E. which precept, she exhibited and presented to G. H. as bailie or officer in that part, specially constituted by the said precept, to the effect aftermentioned, requiring him to put the same to due execution. Which request he found reasonable, and he accepted the said precept, and delivered the same to me, to be read to the witnesses present. This accordingly I did, and of the said precept, the tenor follows. L. M. esquire sheriff depute of the shire of N. to

jointly and severally
 bailies and officers, in this behalf, specially constituted, greeting. Whereas by an inquest of fifteen sworn men, in a sheriff court at N. upon the day of current, in obedience to a brief from the chancery, directed to me, to the effect aftermentioned, it is found, that the said D. B. husband of the said A. B. died last vested and seised as of fee, at the faith and peace of our sovereign lord the king, in all and whole the lands of, &c. (here narrate the lands and other heritage, which belonged to the defunct) lying within the parish of W. and shire of N. Also that the said A. B. was lawful spouse of the said D. B. at the time of his decease, which happened on the day of last. And therefore, by the law and practice of Scotland, she ought to have a reasonable terce or third part of the said lands and estate of C. and others above mentioned, kenned and set aside to her, to be possessed by her in liferent, during her lifetime. The persons who passed upon the said inquest, having served the said A. B. to the sunny third of the said lands and others, in consequence of a lot cast in my presence. As in her said service, and my act of kenning her to the terce following thereupon, at more length is contained. I therefore charge you to pass to the ground of the said lands of C. and there acknowledge, cognosce, kenn, and enter the said A. B. or her attorney in her name, bearer hereof, in and to the said sunny terce, or third part of the said lands of C. and others above mentioned. And this by delivering

ring to her, or her said attorney, a little earth and stone of the ground of the said lands, and other symbols usual or necessary in the like cases. Which to do, I commit to you full power by this my precept, subscribed by me at N. the tenth day of June one thousand seven hundred and eighty six. After reading the aforesaid precept the said G. H. bailie aforesaid, passed to all and sundry the said lands and others, and there, he acknowledge cognosced, kenned, and entered the said A. B. for her liferent use alennarly, during her lifetime, in and to her sunny third part or terce of the said lands and estate of C. and others above mentioned, wherein her said husband died last vested and seised as of fee. And that by delivering to her personally, a little earth and stone of the ground of the said lands. Whereupon, she asked and required instruments under the hand of me notary public, before W. S. and T. Y. both tenants in C. witnesses to the premises specially called and required.

Of the JUDICIAL SALE of a BANKRUPT'S ESTATE.

When the propretor of an estate becomes bankrupt, or the estate is so charged with debts, that prudent persons will not buy from him, the estate may be sold by the court of session, without the consent of the debtor or proprietor, at the instance of any real creditor, whose debt is secured on the land. No process of sale can proceed at the suit of a creditor, without a proof of the debtor's bankruptcy, and therefore the summons of sale must comprehend the debtor's whole estate. The debtor, or his apparent heir, and all the real creditors in possession, must be made partys to the suit; but it is sufficient if the other creditors be called by an edictal citation at the market cross. The summons of sale contains a conclusion of ranking or preference of the bankrupt's creditors. In this ranking, first and second terms are assigned to the whole creditors, for producing their rights and diligences, which must be published in the Evening Courant, and the decree of certification thereon, against the writings not produced, has the same effect in

favour of the creditors who have produced their rights, as if that decree had proceeded upon an action of reduction-improportionation.

The ranking of the creditors must be concluded by an extracted decree before the actual sale, at least to the extent of the value put on the lands by the court. The property of the land is adjudged to the highest offerer. The creditors receiving payment, grant to the purchaser absolute warrandice to the extent of the sums received, and the lands are declared to be disburdened of all debts or deeds of the bankrupt or his ancestors, either on payment of the price by the purchaser to the creditors, or on consignation of it, in case of their refusal, in the hands of the magistrates of Edinburgh. If any of the creditors judge himself hurt by the sale, or a division of the price, he may have an action for recovering his share of the price, against the creditors who have received it.

The expence of the process of sale is disbursed by the factor of the court on the estate, out of the rents in his hands. But if the action of sale be brought by an apparent heir of the debtor, the expence falls on him, if there be any excrescence of the price, after payment of the creditors, but if there be no overplus, the creditors bear the burden of it.

All diligence done against the estate while the action of sale is depending, goes for nothing in point of preference. And when a creditor is preferable on several subjects, he cannot use his preference arbitrarily, by favouring one creditor more than another; he must allocate his universal debt proportionally against all the subjects or partys, whom it affects. If it is material to such creditor, to draw his payment out of any one fund, he may apply his debt that way; but the posterior creditors who have affected the subjects, out of which he drew his payment, may oblige him to assign his right to them upon the separate subjects, which he did not use in the ranking; by which they may recur against the separate subjects, for the shares which the preferred debt might have drawn out of them. But he cannot be compelled to this, if it weaken the preference of any separate debt

debt he holds on the original ground, before the action of sale commenced.

An ABRIDGEMENT of the ACT of PARLIAMENT, 1555, c. 39, ANENT the WARNING of TENANTS.

Warning tenants and others to remove from lands, mills, fishings and possessions, to be in manner following. That the precept of warning be executed, forty days before the term of whitsunday, against the party, personally or at his dwelling house, and also upon the ground of the lands. Thereafter, the same precept be read in the parish church where the lands ly, upon a sunday, during the forenoon's service, and a copy fixed on the most patent door of the kirk-stile, forty days before the term; and if the party remove not at the term, a process of removing shall be competent, upon a citation of six days; in which if the party make no relevant defence, but offer to improve, (disprove) the executions, he shall not be heard till he find caution for violent profits. That there may be ready access for redress, all judges competent in such removings, appointed to hold courts the first lawful fifteen days after trinity sunday; (a moveable feast, next to whitsunday, which was also moveable and depended on easter;) and if the judge ordinary fail in any article of his duty, he shall be liable to damage, interest, and expenses; without prejudice of the action against the violent occupiers, and possessors.

By act 1644. C. 14. warnings are discharged to be read at the kirk door before the first sermon, and ordained to be read immediately after the minister has concluded, and said the blessing.

By act 1690, C. 39. the legal term of removing both in burgh and landward is appointed to be the 15 May, upon warning forty days preceding the same. Hence, tho' it was not originally intended, it is observed in practice, that tho' the agreed term of removing be after whitsunday, yet the warning must be given forty days before the whitsunday which precedes the term of removing, as to possessions or farms in the country.

try. But it is sufficient that the tenant be warned from houses, which have no relation to a country farm, forty days before the end of the set, whether this be whitsunday or martinmas.

ABRIDGMENT of the ACT of SEDFRUNT in December 1756,
ANENT REMOVINGS.

Actions of removing, having been attended with difficulties, the lords of council and session, for a remedy, made the following regulations. Where a tenant is bound to remove without warning, at the end of his tack, the heritor, or setter may obtain horning, and charge him, forty days before whitsunday. And on production of the tack and horning, to the sheriff, he is within six days after the appointed term of removal, to eject the tenant, and deliver the possession void to the setter. 2d. Where the tenant hath not obliged himself to remove without warning, the heritor or setter of the tack, may use the order prescribed by the act, in the year 1555, and pursue a removing; or he may bring his action before the judge ordinary, forty days before whitsunday, which shall be held as equal to a warning on the said act; and the judge shall determine accordingly. 3d. Where a tack is assigned, and this not intimated by an instrument, or where the lands are sublet; a horning executed as aforesaid, or a decret of removing obtained, or a warning on the foresaid statute, against the principal tackman, the same shall be effectual against the assignees or subtenants, for removing and ejecting them. 4th. Where a tenant is in arrear of two years rent, the setter or heritor may declare the irritancy of the tack before the judge ordinary, and insist for a summary removing. Which the judge or sheriff shall grant accordingly. 5th. Where a tenant is in arrear of a full years rent, and deserts his possession, leaving it unlaboured; in either of these cases, the heritor or setter may bring action before the judge ordinary, and obtain a decree against the tenant, to find caution for the arrears, and for the rent of the next five crops, within a certain time; failing which, the
tenant

tenant to remove summarily. 6th. No bill of advocation or suspension of a removing to pass, but by three lords in time of vacance, and by the whole lords, in time of session. The complainer being obliged, within ten days after passing the bill, to find caution, for implement of what shall be decerned, and for damage and expence, and failing such caution, the bill to be held as refused, and the removing to proceed. 7th. In all removings, the lords will determine the same summarily.

PART

ESSAY

ON THE

FORMS

OF

SECURITIES and CONVEYANCES,
USED IN SCOTLAND,
In MOVEABLES.

AN INLAND BILL.

£100

Edinburgh, January 1, 1784.

Three months after date pay to me *or order* at the Exchange Coffee-house here one hundred pounds lawful money for value of

To Mefs C. D. and E. F. }
Merchants in Glasgow
jointly and severally }

A. B.

C. D.

E. F.

A PROMISSORY NOTE.

£100

Edinburgh, January 1, 1784.

We jointly and severally promise to pay Mr A. B. or order one hundred pounds lawful money at the Exchange Coffee-house here in three months after date for value of him

C. D.

E. F.

The nature and consequences of bills and promissary notes, are the same. They must be written on stamped paper, and

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they prescribe, or are limited in six years after the time of payment. They pass by indorsation, from hand to hand, as ready money, for value, and are not subjected to arrestments, compensation or separate discharges, as long as they are current. And this is for six months after they are payable; within which time, they may be protested at the place of payment, or against the accepters personally, and registered for summary diligence on a charge of six days.

This registration should be in the books of the sheriff or magistrates of boroughs where the debtors live, or in the books of session at Edinburgh. On which, horning and caption will proceed, for taking the debtors persons and their effects in payment.

After the six months are elapsed, payment can be compelled only by an ordinary action at law, on a summons and decree for a charge to pay in fifteen days. The reason for such a difference in the time of the charge, is not evident, unless it be, the debtor gets longer notice of the demand for payment, by a summons and sentence, therefore he should get longer time in the charge on this sentence, than on a summary decree of registration. The very reverse ought in justice to be the case, if a difference is to be kept up; but in good policy, the time of all such charges, should be one space of six days.

And after the lapse of six months, bills and notes lose their extraordinary privileges in these respects. They may be affected by arrestments or compensation on account of the indorsers of them, and by separate discharges from them.

The words, *or order*, are not necessary for conveying them as inland bills, drawn and payable in Scotland; nor are the words, *jointly and severally* requisite, to make them binding in these terms. For the accepters are so bound, whether those words be added or not. And even the address, or the name and designation of the acceptor, previous to his subscription, is not necessary; for his subscription sufficiently marks him out to be the person intended, as much as the subscription of the drawer ascertains him, without any address or designation.

We need only to observe farther, that bills or notes, are conveyed by simple indorstation or assignment on their back, in such form as this. Pay to Mr G. H. value received. A. B. But after they are registered, or a sentence upon them, they can be conveyed only by an assignation on stamped paper. And in this case, when they are paid, they need a formal discharge, also on stamped paper.

If a man holds an indorsed bill, he should present it on the third day after it becomes due, being the last day of grace, in order to preserve his recourse in law upon the indorser, in case of nonpayment. But if the third day be sabbath, the bill must be protested on the second day, and notice sent to the indorser, without delay or within 14 days thereafter; otherwise, the recourse will be lost.

BOND *for* BORROWED MONEY.

I, A. B. merchant in Edinburgh do acknowledge that I have borrowed from C. D. merchant in Lieth two hundred pounds, lawful money, of which I discharge him. And I bind myself, and my heirs and executors, to pay the said sum to the said C. D. or his heirs, executors or assignees, at the term of martimass next to come, with forty pounds of penalty and expence in case of failure, and the legal interest of the principal sum from this date, until the same be paid. And I consent to the registration hereof in the books of council and session or others competent, that horning on six days charge, and other execution as accords with law, may pass on the same; appointing for that end,

my procurators. In witness whereof, this deed, written on stamped paper by E. F. writer in Edinburgh, is subscribed by me at Lieth the first day of January one thousand, seven hundred and eighty four, before these witnesses G. H. mason and I. K. wright in Leith.

A. B.

G. H. witness.

I. K. witness.

Or a bond for borrowed money, may be in this shorter, but as effectual form.

I A. B. Merchant in Edinburgh oblige myself and my successors, to pay to C. D. merchant in Lieth, or his successors, two hundred pounds, lawful, borrowed money, and this at martinmas next, with forty pounds of penalty and expence, in case of failure, and the legal interest of the principal sum from this date until payment. (Then the registration and subscription as in the preceding form)

Such a deed must be written upon stamped paper, and it may be done by any person who knows how to do it. This deed and every single deed must be delivered, to finish the matter. And such a deed will continue in force for forty years after the term of payment, which is the longest period of prescription allowed by the law of Scotland. But if such a bond be written by the granter's own hand, called holograph, it will prescribe in twenty years, and it needs not to be signed before witnesses, though it is the best way and least suspicious, to have witnesses present and subscribing.

The granter's heirs or executors are not bound to pay the debt, in the case of any bond, though they be mentioned as in the model, unless they get his effects or land, and so subject themselves. And the creditor may lawfully convey the debt and bond to another, though *successors* or *assignees* be not mentioned to him, even as his successors after his death, may take up the debt, though they be not mentioned. Therefore, the words *heirs*, *executors*, *assignees* or *successors*, are not necessary to be mentioned, for either party.

When the creditor cannot get payment, willingly, he may either put the bond into the register of the borough, or county where the debtor lives, or into the books of session at Edinburgh, and thereon raise the ordinary diligence against the debtor's person and effects by caption and poinding; and also against his lands by inhibition and adjudication.

When diligence is done on the bond for payment, the whole must at last be discharged by a deed on stamped paper. But

no more of the penalty is exacted, than will pay the expence, and keep the creditor free.

FORM of BOND by two PRINCIPALS.

We A. B. and C. D. merchants in Edinburgh have borrowed of E. F. merchant in Lieth two hundred pounds lawful money, of which we discharge him. And we oblige ourselves jointly and severally, and our successors to pay the said sum, to the said E. F. or his successors, at the term of martinmas next, with forty pounds of penalty and expence, if we fail; and the interest of the said principal sum, from this date till payment. (Registration and subscription as before)

If the words, *jointly and severally*, were not added, each of the granters would be liable only for his proportion, or half of the debt, according to the law of Scotland, which is not the case with bills, as was observed in its place.

And it may be noticed, that all transactions and accounts between parties may be settled so, as the balance may be considered as ready money borrowed by the debtor, and a bond or bill be granted for the same, which will shorten narrations of things.

BOND by a PRINCIPAL and CAUTIONERS.

I, A. B. merchant in Glasgow have borrowed from C. D. Weaver in Paisley, two hundred pounds lawful money, of which I discharge him; and I as principal, and E. F. merchant in Glasgow as cautioner for, and debtor with me, bind ourselves jointly and severally, and our successors, to pay the said sum to the said C. D. or his successors, at the term of martinmas next to come, with forty pounds of penalty and expence, in case of failure, and the legal interest of the said principal sum from this date till payment. (Registration and subscription as above)

The creditor, or lender of the money should not admit any clause of relief, to the cautioner, into the bond; because it may be inconvenient to give the cautioner any handle for being let alone till the principal be discussed, as it is called; or
till

till a horning be registered against him, and his lands be adjudged.

The cautionry is a matter to be settled between the principal and cautioner themselves, altogether separate from the creditor.

BOND of RELIEF, by a PRINCIPAL to his CAUTIONER.

Know all men from me A. B. merchant in G. Whereas by a bond of date the day of instant, I as principal, and E. F. merchant in G. as cautioner, bound our selves jointly and severally, and our heirs and executors to pay to C. D. weaver in Paisley or his successors two hundred pounds, lawful money, at martinmas next to come, with forty pounds of penalty, and expence, in case of failure, and the legal interest of the said principal sum from the date of the bond till payment, as the bond itself more fully bears. *And seeing*, I am indeed the principal person concerned in this matter, and received the whole money, and the said E. F. was only cautioner for me, and received no part of the money, he ought to have this security from me; *Wherefore* I do hereby bind and oblige myself, and my successors to *free and relieve* the said E. F. and his afore said of the said principal sum, and the interest thereof, and of the penalty if it be incurred; also of the said bond itself, and of all that may follow on it; And this at the said term of martinmas next, or at any other term thereafter, whenever the said C. D. is pleased to call for the money, without any objection. And for this end to pay the whole money, and retire the bond or a discharge thereof without any trouble, or expence to the said E. F. or his successors; and this under the penalty of forty pounds lawful money, to be paid by me to him, or them, in case of failure, over and beside performance. Registration, on six days charge, &c.

BOND by a TUTOR for his PUPIL.

I, A. B. wright in Lieth have borrowed from C. D. mason in Linlithgow two hundred pounds lawful money, for the use and behoof of E. F. son and heir of the now deceased A. F. of Bonnington, my pupil, of which I discharge the said C. D. and I
have

have applied the money to the use and advantage of my said pupil. I therefore bind myself and my successors, and also my said pupil and his successors, to pay the said sum to the said C. D. or his successors, at martinmas next ensuing, with forty pounds of penalty and expence, in case of failure, and the interest of the said principal sum from this date till payment. (Registration and subscription as before)

The creditor in this case should have the words, *applied to the use and advantage of my Pupil*, always added, because if the fact be so, the pupil would be bound, though the tutor should fail

BOND by a MINOR with CONSENT of his CURATORS.

I, A. B. son of the now deceased L. B. merchant in Edinburgh, with consent of C. D. E. F. and G. H. merchants in Edinburgh, my curators, of whom two are a quorum, have borrowed from I. K. wright in Edinburgh two hundred pounds, lawful money, of which I discharge him, and the same is applied profitably in my own affairs. I therefore with consent of my said curators, or the quorum of them subscribing, bind and oblige myself and my successors, to pay the said sum to the said I. K. or his successors, at martinmas next ensuing, with forty pounds of penalty and expence in case of failure, and the legal interest of the said principal sum from this date till payment. And we the said curators bind and oblige ourselves jointly and severally, and our successors, as cautioners for and debtors with the said A. B. to the said I. K. for payment of the foresaid principal sum, interest and expences, failing the said A. B. to make payment thereof. (Registration and subscription as before)

Such bonds do not bind minors, except the money be applied to their use and advantage, for which reason, it is proper that this be mentioned, and that the curators become bound as cautioners, which they need not refuse to be, if the affairs of the minor are in good order, or not much burdened. And the creditor should always know how many of the curators
make

make a quorum, and if any one of them be *sine quo non*, and if they are to sign the bond.

BOND of INTERDICTION.

Know all men from me A. B. merchant in Edinburgh. Whereas I find by experience that I am too ready to be imposed on, and to spend my substance improperly, and involve myself in distress: and having full confidence in C. D. merchant, E. F. writer and G. H. wright, all in Edinburgh, as faithful counsellors to me, *therefore* I do hereby, freely, and of my own accord, interdict and restrain myself to the said C. D. E. F. and G. H. and any two of them, and the survivor of them. And I bind and oblige myself, that I will not grant or subscribe any bill or bond, conveyance or discharge; or do any deed whatever, either personal or heritable, whereby my moveable effects, or my lands, tenements, or other heritable subjects, may be sold, or disposed, or affected by diligence in any degree; or whereby my person may be taken and imprisoned. Also that I will not buy nor sell, nor make any bargain whatever, to dispose of my said heritable and moveable subject, or to burden the same with debt in any respect. And all this unless I first obtain the consent of my said interdictors and curators in writing, to whatever deed I shall do in the premises. Otherwise, all and every one of my said deeds, whether in writing or without it, shall be void and null, without more ado. And I bind myself and my successors, that this voluntary deed shall be as effectual in favour of my said interdictors and curators, as if the same restraint were laid upon me by a court of law. Any law or practice to the contrary notwithstanding. And I consent to the registration hereof in the books of council and session, or others competent, for preservation, and for publication, and that all execution may pass hereon as accords with the law, appointing for that end

my procurators. In witness
whereof, &c. in common form.

An interdiction must be published at the market cross of the jurisdiction where the person resides, and it must be registered

gistered within 40 days of the publication in common form. It secures only the lands and heritable subjects of the interdicted person, but not his moveable estate, although the latter is mentioned; and all onerous or rational deeds granted by him, are effectual without consent of the interdictors; but he cannot alter the succession of his heritable estate, by any deed however rational.

BOND by the DEACON and BOXMASTER of a CORPORATION for BORROWED MONEY.

We A. B. deacon, and C. D. boxmaster of the glover incorporation of Pennymake, for ourselves, and as representing all the members of the said incorporation, acknowledge that in consequence of an act of the said incorporation, of this date, of which an extract is herewith delivered, we have borrowed by the hand of the said C. D. from E. F. merchant in Edinburgh one hundred pounds, lawful money, of which we discharge him. And we for ourselves and the said incorporation, bind ourselves and our successors in office, and all the members of the said incorporation and their successors, to pay the said principal sum to the said E. F. or his successors, at the term of martinmas next, with twenty pounds of penalty in case of failure, and the legal interest of the said principal sum from this date until payment. (Registration and subscription in common form.)

It is proper for the creditor to know in cases of this kind, whether the deacon and boxmaster have authority from their corporation, to borrow the money, and that he get an extract of their act for this under the hand of their clerk, along with the bond or bill.

After the same form, are bonds granted by the magistrates, dean of guild and treasurer of a royal borough, for borrowed money. They do it for themselves, and as representing the town council and whole community of the borough, and they should do this in consequence of authority from the council, of which the creditor should always receive an extract, along with the bond or bill he receives for the money.

BOND of PROVISION by a FATHER to his SON.

I, A. B. mason in Glasgow, for the fatherly affection I bear to C. B. my son, and for his portion, bind and oblige myself and my heirs and executors, to pay to him and his heirs, and assignees; who failing, to return to me, and my heirs, the sum of three hundred pounds, lawful money, and this at the first whitsunday or martinmas after my decease, with forty pounds of penalty and expence in case of failure, and the legal interest of the said principal sum after the said term of payment, and till the same be paid. And I bind myself and my foresaid to aliment, educate and furnish the said C. B. with all things necessary until I put him to an employment for earning his bread, or till he be twenty one years old, or till the term of payment of the said provision, which ever of these three things shall first happen. And I declare that this bond of provision is in full to him, of all claims or demands he might otherwise have on my successors or substance, by the death of his mother or me. Reserving full power to myself, while in life, though at the point of death, to alter this bond, or declare the same null, by any writing under my hand; but if it be not altered, I declare the same to be valid and effectual, though it be found undelivered at my decease, with which I dispense. (Registration and subscription in common form.)

BOND of PROVISION by a FATHER to his WHOLE CHILDREN.

I, A. B. merchant in Glasgow, for the paternal love I have to C. B. D. B. and E. B. my children, and for their portions, bind and oblige myself, and my successors to pay to my said children, the several sums of money or provisions after mentioned, viz, to the said C. B. my eldest son four hundred pounds, lawful money, and to the said D. B. my second son, three hundred and fifty pounds, lawful money, and this at their several ages of fourteen years, and to the said E. B. my daughter, three hundred pounds lawful money, at her age of twelve years, with ten pounds for each hundred pounds of the said principal sums

sums, of penalty and expence, in case of failure, and the legal interest of the said principal sums from the first term of candlemas, whitsunday, lammass or martinmas, after my decease till payment. And I bind myself, and my successors to aliment, educate and furnish my said children with all necessities until their said portions be paid. Providing however, that if any of my said children shall die before the marriage or majority of him or her, in that case, the portion of the child deceasing shall belong to the survivors equally. And that it shall not be in the power of my said children, to frustrate this condition and destination, by any deed before their marriage, and during their minority. And reserving to myself, at any time of my life, to alter this bond, or declare the same null, as I shall think fit, by a writing under my hand. And if it be not so altered, I declare the same to be valid and effectual, although it be not delivered to them at my decease with which I dispense. (Registration and subscription in common form.)

BOND and ASSIGNATION for BORROWED MONEY.

I, A. B. Merchant in Edinburgh have borrowed from C. D. of Beautifield, two hundred pounds, lawful money, of which I discharge him. And I bind myself and my successors to pay the said sum to him or his successors, at martinmas next, with thirty pounds of penalty and expence in case of failure, and the legal interest of the said principal sum, from this date until the same be paid. And in further security I assign to the said C. D. and his foresaid as much of three hundred pounds lawful money contained in a bond granted by E. F. merchant in Leith to me, dated the eleventh day of November last, and payable the eleventh day of November next, as will pay the principal sum, and the interest thereof, and the penalty above mentioned, if incurred, also the interest and penalty contained in the said bond, with the bond itself, and all that may follow thereon. With full power to the said C. D. and his above named, to do every thing herein as the absolute proprietors thereof. And I bind myself and my successors to warrant this assignation to him and them from my own fact and deed. And I have here-

with delivered the foresaid bond to the said C. D. in order to be kept and used by him as his own evidence in security aforesaid. (Registration and subscription in common form.)

It is necessary that this assignation in security, be intimated to E. F. the granter of the bond, either by a notary public, or that the granter subscribe a letter to C. D. acknowledging, that he has seen the assignation, and he holds it as sufficiently intimated, or by giving him a summons, or charge to pay. Without this, it would be in the power of A. B. to assign the same bond to another person, who might intimate his posterior assignation before the other, to the debtor, and he would be preferred to the subject. This caution may be remembered for the cases of all assignations of money, and the securities thereof.

BOND, *and* DISPOSITION of MOVEABLES in SECURITY.

I, A. B. merchant in Stirling have borrowed from C. D. of Moneymake, two hundred pounds lawful money, of which I discharge him. And I bind myself and my successors to pay the said sum to the said C. D. or his successors at martinmas next, with thirty pounds of penalty and expense, in case of failure; and the legal interest of the said principal sum, from this date until payment. And in further security, I assign and dispoise to the said C. D. and his foresaid, all the corns, horses and instruments of husbandry on my farm of E. in this neighbourhood, conformable to an inventory thereof on stamped paper, subscribed by me, and herewith delivered; declaring that I hold the said effects only in trust for the said C. D. till he be paid of the borrowed money, interest and expense above mentioned. And if I buy or sell on the said effects, the produce, or what comes in place of the present subject, shall still be his, without any objection. With power to him to intermeddle with and dispose of the said subjects without any other warrant but this, after the said term of payment. And I bind myself and my successors to warrant this disposition and the subject of it, to the said C. D. and his successors, at all hands. And I have herewith delivered the possession of the
said

faid moveables, in the mean time. (Registration and subscription in common form.)

BOND of CORROBORATION.

Know all men from me A. B. merchant in Edinburgh. Whereas I by a bond, of date the first day of January last, bound myself and my successors to pay to C. D. merchant in Leith, or his successors, two hundred pounds, borrowed, lawful money, and this at martinmas last, with forty pounds of penalty and expence in case of failure, and the legal interest of the said principal sum, from the date of the bond till payment; as the bond itself more fully bears. Which bond the said C. D. was under the necessity of registering for non-payment, and he raised horning thereon, and gave me a charge to pay. And seeing he has now agreed to delay the demand of payment, upon my granting the obligation under written, Therefore, in corroboration of the said bond and diligence thereon, and without prejudice thereto, I bind and oblige myself, and my successors whomsoever, to pay to the said C. D. or his successors, the foresaid principal sum, and the interest thereof, with the penalty and expence above mentioned, at the term of martinmas next, without longer delay. (Registration and subscription in common.)

If the bygone interest is to be accumulated, and made a principal sum; it must be properly mentioned; or if an additional sum is borrowed, it should be specified, and the obligation should bear the fact. If the bond be granted to the heir, in heritage, or to the executors in moveables, of the original creditor; after narrating the first bond, we should mention the steps of the person's title, as his service or confirmed testament, and then proceed in the corroborative obligation. So also is the case of an assignee of the original creditor.

If the bond be granted by the heir, or executor of the grantor, his relation and title ought to be also mentioned, and then proceed in common form.

Bonds of corroboration may be by themselves as in the example just now given, or they may be a part of other writings, according

according to the several circumstances; but one cannot be at any loss to form them, in reflecting on what the thing is, which is wanted, the steps to it, and the consequences of it.

BOND to CONVEY LANDS *for* MONEY RECEIVED.

I, A. B. of Borrowton acknowledge, that I have received from C. D. of Purchasewell, one thousand pounds lawful money, of which I discharge him; and this as the agreed price of my said lands and estate of Borrowton, with the pertinents; *For which price* I bind and oblige myself, and my heirs and executors whomsoever, to sell and convey, in full form, and with all speed, even as I now sell and convey in general terms to the said C. D. and his said heirs and assignees, my said lands and estate of Borrowton, with the whole pertinents and privileges thereof, as the same lie in the parish of E. and shire of F. and are possessed by me, and my tenants. And I declare his entry to the possession of the said lands and the rents thereof, to be at this date. And for this end, I bind myself and my foresaid to grant to the said C. D. and his abovenamed, all writs and conveyances necessary for denuding me, and establishing his right and property of the said estate, with absolute warranty; and to deliver to him a sufficient progress of writs of the said estate for forty years; also to clear the same of all debts and burdens. And all this under the penalty of one hundred pounds lawful money, to be paid by me to him in case of failure, over and beside performance. And I consent to the Registration, &c. in common form.

Bargains of land are often made by a contract between the parties, vulgarly called, a minute of sale, whereby, on the one part, the seller binds himself to denude and convey, and the buyer on the other part, binds himself to pay the price, and all this under a mutual penalty. This is a good way, when there is any doubt concerning the writings, and burdens of the estate. Therefore take the following example of such a writing.

Contract

CONTRACT of SALE of LAND.

It is contracted and agreed between A. B. of Borrowton, on the one part, and C. D. of Purchafewell, on the other part, to the following effect. The said A. B. in consideration of the price after mentioned binds and obliges himself, and his heirs and executors whomsoever, to sell and convey in full form, and with all speed, even as he now sells and conveys in general terms, to the said C. D. and his heirs and assignees, the said A. B's. lands and estate of Borrowton, with the patronage of the parish church, and the fishings, mills, and other pertinents, and privileges thereof as the same lie in the parish of E. and shire of F. and are possessed by him and his tenants. And he declares the said C. D's. entry to the possession of the said lands and others, and the rents and profits thereof, to be at the term of whitsunday next. And for this end the said A. B. binds himself and his successors, to grant to the said C. D. and his above named, all writs and conveyances necessary, for denuding the said A. B. of the said estate, and for establishing the said C. D. right and property thereof, with absolute warranty; and to deliver to him a sufficient progress of writs of the said estate, for forty years at least and to clear the estate of all debts and burdens. And on the other part, in consideration of the premises, the said C. D. binds and obliges himself, and his successors, to pay to the said A. B. and his fore-said one thousand pounds lawful money, as the agreed value and price of the said lands and estate with the pertinents, and this at the said term of whitsunday next, and the legal interest of the said sum from that term till payment. And both parties bind themselves and their successors, to perform their several parts of the premises to one another under the penalty of two hundred pounds, lawful money, to be paid by the failer to the other party, over and beside performance. And they consent to the registration hereof in common form.

A mutual contract needs no delivery to perfect it.

In making a bargain for the purchase of land, the buyer should see the title deeds, and should know the real rent, and the public burdens, or the cess, feu-duty, minister's stipend, school-master's

master's salary and thirlage. Also the other burdens, or incumbrances, such as heritable bonds, adjudications, and inhibitions. The seller should specify all this distinctly in writing, that the purchaser may satisfy himself, and at last see the estate cleared of every thing.

BOND by the SELLER of an ESTATE to the BUYER, for the PRICE, in ORDER to PROCURE an ADJUDICATION of the ESTATE for ESTABLISHING a GOOD TITLE.

I, A. B. of Borrowton, grant me to have received from C. D. merchant in Edinburgh two thousand pounds, lawful money, as the price of my said estate of Borrowton, of which I discharge him. And I bind myself and my successors to pay the said sum to the said C. D. or his successors at martinmas next, with three hundred pounds of penalty and expense in case of failure, and the legal interest of the said principal sum from this date until payment. Provided however, that it shall not be lawful for the said C. D. or any of his successors or assignees, to use any execution upon this bond, either personal against me or my successors, or real against the other estates, that now or shall hereafter belong to me or my successors; but only against the said lands and estate of Borrowton with the pertinents, lying in the parish of E. and shire of F. which are sold by me to the said C. D. and for securing him in that purchase, either by adjudication, or any other diligence or title, as he pleases, this bond is granted, and no otherwise. (Registration and subscription in common form.)

Of BONDS of BOTTOMRY on a SHIP.

Bottomry is a custom of lending money to mariners on the adventure of a voyage; whereby, if the ship returns safe, the borrower is to pay the lender a premium over and above the money lent, which is not ruled by lawful interest, but by the agreement of the parties; because the adventure interfering, and the lender being liable to lose all his money, in case the ship should not return safe, the taking above common interest is not reckoned usury. The value of premiums in these cases,

it is impossible to ascertain, this depending on a variety of contingencies. But it is generally between 30. and 50. *per cent.* The difference of voyages, the goodness of the ship, and whether it be peace or war, all contribute to render the value of the premium uncertain. And the greater the danger is, the greater may be the profit reasonably required, for the money advanced. Money lent on bottomry, is either on the bare ship, (the usual way) or upon the person of the borrower, and sometimes upon both. The first is where a man takes up money, and obliges himself, that, if such a ship shall arrive at such a port, then to repay, perhaps, in long voyages, near double the sum lent; but, if the ship happens to miscarry, then nothing. But when money is lent at interest, it is delivered at the peril of the borrower, and the profit of this is merely the loan. Whereas the profit of the other, is a reward for the dangers and adventure of the sea; which the lender takes upon himself, and makes the interest lawful. In a competition of bonds of bottomry, the last will be preferable to preceding ones, because by it the ship was enabled to proceed in the voyage; but if the owner of the ship borrows money for his own use, and binds the ship to the creditors for their security, his bonds to them are preferable according to their dates. The creditor needs not prove that the ship wanted the reparations, but only that he fairly lent the money to the master, acting as such for the use of the ship and voyage.

Bottomry (which originally arose from permitting the master of a ship, in a foreign country, to hypothecate the ship in order to raise money to refit) is in the nature of a mortgage of a ship, when the owner takes up money to enable him to carry on his voyage, and pledges the keel or bottom of the ship (a part for the whole) as a security for the repayment. In which case it is understood, that, if the ship be lost, the lender loses also his whole money, but, if it returns in safety, then he shall receive back his principal, and also the premium or interest agreed upon, however it may exceed the legal rate of interest. And this is allowed to be a valid contract in all trading nations, for the benefit of commerce, and by reason of the extraordinary

hazard run by the lender. And in this case the ship and tackle, if brought home, are answerable (as well as the person of the borrower) for the money lent. But if the loan is not upon the vessel, but upon the goods and merchandize, which must necessarily be sold, or exchanged in the course of the voyage, then only the borrower personally, is bound to answer the contract; who therefore in this case, is said to take up money at *respondentia*. These terms were also applied to contracts for the repayment of money borrowed, not on the ship and goods only, but on the mere hazard of the voyage itself; when a man lends a merchant one thousand pounds to be employed in a beneficial trade with condition to be repaid with extraordinary interest, if such a voyage be safely performed: which kind of agreement is sometimes called *fœnus nauticum*, and sometimes *usura maritima*. But, as this gave an opening for usurious and gaming contracts, especially upon long voyages, it was enacted by the statute 19 Geo. II. c. 37. that all money lent on bottomry or at *respondentia*, on vessels bound to and from the East Indies, shall be expressly lent only upon the ship or upon the merchandize; that the lender shall have the benefit of salvage; and that if the borrower has not on board effects to the value of the sum borrowed, he shall be responsible to the lender, for so much of the principal as hath not been laid out, with legal interest and all other charges, though the ship and merchandize be totally lost.

BOND of BOTTOMRY.

To all people, to whom these presents shall come, I, A. B. of C. owner and master of the good ship called D. of the burden of two hundred tons, or thereabout, now riding at anchor in the harbour of E. and bound for F. in the west Indies, send greeting. Whereas I the said A. B. am at this time necessitated to take upon the adventure of the said ship, the sum of one hundred pounds, lawful money, for setting her forth to sea, and furnishing her with provisions and necessaries for the said voyage; which sum C. D. of W. merchant, hath, at my request lent unto me, at the rate of twenty pounds money
fore said;

foresaid; for the said one hundred pounds during the voyage; *Now*, know ye that I the said A. B. do hereby, for me, my executors, and administrators, covenant and grant to, and with the said C. D. that the ship shall, with the first fair wind, after the first day of May next depart from E. and shall, as wind and weather serve, proceed in her voyage to M. in the west Indies, and, having tarried until and the opportunity of a convoy or being sooner dispatched, (which ever shall first happen) shall return from that place and shall as wind and weather serve, directly sail back to E. to finish the said voyage. And I the said A. B. in consideration of the said sum of one hundred pounds, do hereby bind myself, my heirs, executors and administrators, my goods and chattels, and particularly the said ship with the freight, tackle and apparel of the same, to pay unto the said C. D. his executors administrators, or assigns, the sum of one hundred and twenty pounds lawful, British money, within twenty days next after the return, and safe arrival of the said ship in the said E. from the said intended voyage, and I the said A. B. do hereby for me and my aforesaid, covenant and grant to and with the said C. D. and his foresaid, that at the time of executing and delivery of this deed, I am true and lawful owner and master of the said ship, and have power and authority to charge and engage her as aforesaid. And that the said ship shall at all times after the said voyage, be liable and chargeable for the payment of the said one hundred and twenty pounds, according to the true intent and meaning of this deed and that the said ship is free, and clear from all former bargains and sales, titles, charges, and incumbrances whatsoever. And lastly, it is hereby declared and agreed by, and between the said parties, that in case the said ship shall be lost, miscarry, or be cast away before her next arrival in the said E. from the said intended voyage, that then the payment of the said one hundred and twenty pounds shall not be demanded, or be recoverable by the said C. D. his executors, administrators or assigns; but shall cease and determine, and the loss thereby be wholly born and sustained by him and them and that then, and from thenceforth every act, matter and

thing herein contained on the part of the said A. B. shall be void, any thing herein contained, to the contrary notwithstanding. *In witness, &c.*

Sometimes there is added to these bonds a conveyance of the ship, in this manner. And for the better performance of the premises, I the said A. B. do hereby bargain, sell and convey to and in favour of the said C. D. his heirs and executors, all the said ship, and the tackle thereof, &c. And then follows this clause. Providing nevertheless, that if the said A. B. his heirs or executors shall really and with effect pay or cause to be paid to the said C. D. his heirs or executors, or assignees, the said one hundred and twenty pounds money foresaid, and likewise perform the agreement herein contained to be done on his part, that then, and in that case, this present bargain and sale of the said ship and premises, and every thing therein contained, shall cease and be void and null; any thing herein contained to the contrary notwithstanding.

POLICY of INSURANCE upon GOODS.

In the name of God, Amen. Know all men by these presents, that we subscribers merchants in Glasgow, have assured, like as we, each of us for ourselves, do hereby assure, to and in favour of A. B. the several sums of money annexed to our respective names underwritten, upon all and whatsoever lawful kinds of goods and merchandize, laden, or to be laden on his account, on board the W. burden three hundred tons, or thereabouts, whereof E. D. is master for this present voyage; or whosoever else shall go Master in the said ship, or by whatever other name the said ship or master is or shall be called. Beginning the adventure upon the said goods and merchandize, from the loading of the same on board the said ship in F. and to continue and endure until the ship, with her goods and merchandize, shall arrive at Y. and until the goods be safely unloaded. The said goods and merchandizedize are, and shall be valued at one thousand pounds lawful money, without any farther account to be given by the assured to the assurers, or any of them, for the same. According to which particular

particular sum, all losses that may happen upon the said goods and merchandize, are to be repaired by us proportionably to the several sums annexed to our subscriptions, in manner underwritten, touching the adventures and perils, which we the said assurers are contented to bear, and do take upon us in this voyage; they are, of the sea, men of war, enemies, pirates, rovers, thieves, jettisons, letters of mart or counter mart, surprisals, takings at sea, arrests, restraints and detainerments of all kings, princes or people, of what nation, condition, or quality soever, barratry of the master or mariners, and all other perils, losses or misfortunes, that have or shall come, to the hurt, detriment or damage of the said goods, and merchandize, or any part thereof, during this adventure. And, in case of any misfortune or loss, it shall be lawful for the assured, their factors, servants and assigns, to sue, labour, and travel for, and in and about the defence, safeguard and recovery of the said goods and merchandize, or any part thereof, without prejudice to this assurance; to the charges whereof, we the assurers will contribute, each of us for ourselves, according to the respective sums assured by us, in manner underwritten. And it is agreed by us the assurers, that this writing and assurance shall be of as much force and effect, as the surest policy or writing of assurance made at London. And so we the assurers do hereby bind and oblige us each of us for ourselves, conformable to the sums of money annexed to our respective subscriptions underwritten, our heirs and successors, to the said A. B. his heirs, executors and assigns, for the true performance of the premises, and to repair any loss they shall sustain upon the said goods and merchandize, or any part thereof to the extent of the sums at which the same are particularly valued, in manner above written, during the continuance of this adventure. Confessing ourselves paid of the consideration due to us for this assurance by the said assured, after the rate of

per hundred pounds sterling. And, it is hereby agreed, that, in case of any loss upon the said goods and merchandize, there shall be an abatement of two pounds *per* hundred at payment thereof. And it is farther agreed, that in case of average
loss

loss not exceeding five pounds *per* hundred, upon the whole ship, tackle, apparel, boat and other furniture and upon the whole goods and merchandizes, laden or to be laden aboard the said ship, we are not to pay or allow any thing toward repairing such loss. It is likewise declared, that the part lost or damaged shall be valued exactly in proportion to the value of the whole subject thereby insured. And it is farther agreed, that, in case any dispute or difference shall arise relating to a loss on this policy, it shall be referred to two different persons, one to be chosen by the said assured, and the other by us, who shall have full power to adjust the same; and, in case they cannot agree, then such two persons shall chuse a third person to be overman and umpire betwixt them, and, any two of them agreeing their sentence and award shall be obligatory to both parties. With and under the burden of which three last named provisions, these presents are granted, and no otherways. In witness whereof we have subscribed this deed, printed on stamped paper conformable to act of parliament, at Glasgow the thirteenth day of February one thousand seven hundred and eighty four, before these witnesses, E. F. and G. H. both merchants in Glasgow. The blanks, witnesses names and designations, being filled up by I. K. writer in Glasgow.

R. S. witness

L. M.

T. W. witness

N. O.

P. Q.

An English policy of insurance, is much in the same form, and wholly to the same effect, as the above example.

The difference of executing a deed in Scotland and England, lyes in this. In Scotland, the writer and the witnesses must be designed, and the pages numbered, and also subscribed by the party and the last page subscribed by the witnesses. But in England, it is not required to name the writer or the witnesses in the body of the deed, nor to number the pages; but the party subscribes only the last page, and adds his seal; and the witnesses sign their names, without adding the word witnesses, to them.

A Policy of Insurance says a learned author, is a contract
between

between A. and B. that upon A's paying a premium equivalent to the hazard run, B. will indemnify or insure him against a particular event. This is founded upon one of the same principles as the doctrine of interests upon loans, that of hazard; but not that of inconvenience. For if I insure a ship to the Levant, and back again, at five per cent; here I calculate the chance that she performs her voyage, to be twenty to one against her being lost; and if she be lost, I lose one hundred pounds and get five pounds. Now this is much the same as if I lend the merchant, whose whole fortunes are embarked in this vessel, one hundred pounds at the rate of eight per cent. For by a loan I should be immediately out of my money, the inconvenience of which we have computed equal to three per cent: if therefore I had actually lent him one hundred pounds I must have added three pounds, on the score of inconvenience to the five pounds allowed for the hazard; which together would have made eight pounds. But as, upon an insurance, I am never out of my money till the loss actually happens, nothing is therein allowed upon the principle of inconvenience, but all upon the principle of hazard. Thus too, in a loan, if the chance of repayment depends upon the borrower's life, it is frequent (besides the usual rate of interest) for the borrower to have his life insured till the time of repayment; for which he is loaded with an additional premium, suited to his age and constitution. This, if Sempronius has only an annuity for his life, and would borrow one hundred pounds of Titius for a year; the inconvenience and general hazard of this loan, we have seen, are equivalent to five pounds, which is therefore the legal interest: but there is also a special hazard in this case; for if Sempronius dies within the year, Titius must lose the whole of his one hundred pounds. Suppose this chance to be as one to ten, it will follow, that the extraordinary hazard is worth ten pound more; and therefore that the reasonable rate of interest in this case, would be fifteen per cent. But this the law, to avoid abuses, will not permit to be taken; Sempronius therefore gives Titius the lender only five pounds, the legal interest: but applies to Gaius an insurer, and gives him the other ten pounds to indemnify

demnify Titius against the extraordinary hazard. And in this manner may any extraordinary or particular hazard be provided, against which the established rate of interest will not reach, that being calculated by the state to answer only the ordinary and general hazard, together with the lenders inconvenience in parting with the specie for the time.

The learning relating to marine insurances hath of late years been greatly improved by a series of judicial decisions, which have now established the law in such a variety of cases, that (if well and judiciously collected) they would form a very compleat title in a code of commercial jurisprudence. But, being founded on equitable principles, which chiefly result from the special circumstances of the case, it is not easy to reduce them to any general heads in mere elementary institutes. Thus much may however be said; that, being contracts, the very essence of which consists in observing the purest good faith and integrity, they are vacated by any of the least shadow of fraud or undue concealment: and, on the other hand, being much for the benefit, and extension of trade, by distributing the loss or gain among a number of adventures, they are greatly encouraged and protected both by common law and acts of parliament.

But, as a practice hath obtained of insuring large sums, without having any property on board, which were called insurances, interest or no interest, and also of insuring the same goods several times over; both of which were a species of gaming, without any advantage to commerce, and were denominated wagering policies; it is therefore enacted by the statute nineteen Geo. II. 6. 37, that all insurances, interest or no interest, or without farther proof of interest than the policy itself, or by way of gaming or wagering, or without benefit of salvage to the insurer, (all which had the same pernicious tendency) shall be totally null and void, except upon privateers, or ships in the Spanish and Portuguese trade, for reasons sufficiently obvious and that no re-assurance shall be lawful, except the former insurer shall be insolvent, a bankrupt, or dead; and lastly that, in the East India trade, the lender of money on bottomry, or at *respondentia*, shall alone have a right to be insured for the money

money lent, and the borrower shall (in case of a loss) recover no more upon any insurance, than the surplus of his property, above the value of his bottomry or *respondentia* bond.

BOND of CAUTIONRY for LOOSING an ARRESTMENT not REQUIRING STAMPED PAPER.

I, A. B. of Bonnywell bind and oblige myself and my heirs and executors, as cautioner and surety, acted in the books of council and session, for C. D. mason in Leith, that his whole goods and gear, money and effects whatsoever, and rents and profits of lands, arrested at the instance of E. F. merchant in Mulsburgh, shall be made forth coming to the said E. F. as law will. And I consent to the registration hereof in the books of council and session, that horning and all execution necessary may pass hereon as aforesaid, appointing for that end

my procurators

In witness whereof, &c.

BOND of CAUTIONRY in a SUSPENSION on a MULTIPLE POUNDING, not REQUIRING STAMPED PAPER.

I, A. B. merchant in Dundee do hereby bind and oblige myself and my heirs and executors, as cautioner and surety, acted in the books of council and session for C. D. merchant in Forfar, that he shall pay to E. F, G. H, I. K. or to any of them who shall be found by the lords of council and session to have the best right to the sum of one hundred pounds of principal and the interest thereof, and the penalty contained in a bond, granted by the said C. D. to the now deceased L. M. and to which the whole forenamed persons pretend right; in case it shall be found by the said lords, that he ought so to do, after discussing the suspension to be raised by the said C. D. in this matter. (Clause of registration and subscription.)

If the condition of the cautioner is unknown to the clerk of the bills, a person better known must attest his sufficiency in the following manner, upon the back of the other bond.

I, T. W. in Y. not only attest the sufficiency of the within named A. B. but I bind and oblige myself and my successors as cautioners for him, and for the sums of money within men-

Q

tioned

tioned, as fully as the said A. B. himself is bound, excepting the order of discussing. And I consent to the registration hereof with the within bond, that execution may pass subsidiarily hereon, accordingly, &c.

These sort of bonds are generally written by the agents employed, and therefore more examples need not be added.

An ENGLISH OBLIGATION or BOND, with CONDITION for the PAYMENT of MONEY.

Know all men by these presents, that I, David Edwards of Lincolns Inn, in the county of Middlesex, esquire, am held and firmly bound to Abraham Barker of Dalehall, in the county of Norfolk, esquire, in ten thousand pounds lawful money of Great Britain, to be paid to the said Abraham Barker, or his certain attorney, executors, administrators, or assigns. For which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal. Dated the fourth day of September in the twenty first year of the reign of our sovereign, George the II. by the grace of God, king of Great Britain, France, and Ireland, defender of the faith, and so forth; and in the year of our Lord, one thousand seven hundred and forty seven.

The condition of this obligation is such, that if the above bounden David Edwards, his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the above named Abraham Barker, his executors, administrators, or assigns, the full sum of five thousand pounds, of lawful British money, with lawful interest for the same, on the fourth day of March next ensuing the date of the above written obligation, then this obligation shall be void, and of none effect; or else shall be, and remain in full force and virtue.

Sealed, and delivered, being }
first duly stamped, in the }
presence of }

David Edwards

George Charter.

William Brown.

No more of the penalty in such bonds is for ordinary exact-
ed

ed, than will defray the creditor's expence, and keep him free. The same thing is used in Scotland.

A TESTAMENT, or LAST-WILL.

I, A. B. merchant in Edinburgh, being at present of sound mind, and fit for setting my affairs into order, do make my last will and testament as follows. I nominate and appoint C. D. wright in Mufleburgh, to be my sole executor, and the universal intermeddler with all my moveable goods and gear, after my decease; and to him, exclusive of all others; I leave and bequeath all and sundry my said goods and gear, whatsoever and wheresoever the same shall be, without any exception or reservation, and all the vouchers and documents of my said substance. With full power to him, immediately after my death, to intermeddle with, and dispose of all my said goods and gear, and to call for, and discharge all my claims, and do every thing concerning the whole, as fully and freely as I might have done myself, without any controul. And I dispense with the generality hereof, and hold the same to be as sufficient, as if every particular were herein set down. Providing only, that the said C. D. shall be bound and obliged to pay all my just and lawful debts, and fifty pounds, lawful money, to E. F. merchant in Glasgow, and the like sum of fifty pounds to G. H. wright in that place, my particular acquaintances; which sums I give them as legacies in remembrance of our friendship. And I consent to the registration hereof in the books of council and session, or others competent for preservation, and to receive execution as afferes; appointing for that end

my procurators.

In witness whereof this present, written upon this and the preceding page of stamped paper, by I. N. writer in P. is subscribed by me at Edinburgh the sixteenth day of January one thousand seven hundred and eighty four, before these witnesses, L. M. and N. O. both mafons in Edinburgh. A. B.

L. M. witness.

N. O. witness.

Q₂

Codicil

CODICIL *to the ABOVE TESTAMENT.*

I, A. B. merchant in Edinburgh, having made my testament on the sixteenth day of January last, I refer thereto, but I so far alter the same, that I provide and appoint C. D. wright in Mussleburgh my executor to pay to I. K. bookseller in Edinburgh, twenty pounds lawful money, and to P. Q. wright there, fifteen pounds, as legacies, which I give and leave to them out of the first end of my free goods and gear. In witness whereof, this present, written by I. N. writer in P. is subscribed by me, &c. in common form.

A testament and codicil to it, may be lawfully written on common paper; but a nomination of tutors and curators, is frequently added to a testament, and in that case, it ought to be on stamped paper. It is agreed, that a testament ought to be favourably interpreted, that it may have effect, if the words are clear, though it be not written in the best form, or most expressive manner.

The proper form of a testament is, to appoint an executor, and to make over all the effects to him. Then to take him bound to pay the testators debts, and the particular legacies he appoints; and lastly, if the testator finds it necessary, and so inclines, he may appoint tutors and curators for his children, with the quality of their not being liable for omissions, but for actual intromissions only, and each for himself alone, and not for the rest; which appointment will be good, if the person live sixty days, or go unsupported to church and market, after it, and to decline the office of curatory though they accept the tutory; every person may make a testament, who is not prohibited by law. A man may do so, after he is fourteen years old, and a woman, when she is twelve; and both, without the consent of any person, such as parents, tutors and curators or husbands. But bastards cannot make a testament unless they receive legitimization from the king. All moveable effects may be conveyed by testament, but no heritage; and one cannot make a testament in prejudice of his wife and children's legal share of the effects at his death. But executory, or the subject of testaments must be free, before any division be
made.

made. And in case of no testament, or previous contract of marriage, when the husband dies, leaving a wife and children, she gets one third of his moveables; the children another third, in their own right, and the last third as nearest of kin to their father. If the mother die first in such circumstances, the children gets her third part, and the father two thirds. In case of no children, the husband and wife share the effects equally between them.

A testament is of no force till the death of the testator, and the last testament implies a revocation of all former ones, unless a reference be had to them in the last, and a reservation of them, in whole, or in part, be made.

After the death of the testator, the testament should be confirmed by the commissary of the diocese where the testator died, which is done by calling all concerned at the parish church door, on nine days notice by an edict, to appear in the commissary court for their interest. And at the day appointed, the commissary ratifies the testament and executor, receives the inventory of the effects he gives up, and appoints him to proceed accordingly in the affairs of the deceased.

If any one die intestate, without making a will, his nearest of kin, children, brothers, father, uncles, &c. are intitled to the succession and his effects. They serve an edict as just now mentioned, and get themselves appointed executors of the deceased. They give up an inventory of his effects, and find security to answer all concerned, and they receive authority to intermeddle with and dispose of the gear.

One notary, or the minister of the parish may sign a testament for a party, when he cannot write, before two witnesses; to the greatest amount.

NOMINATION of TUTORS and CURATORS, *separate from a* TESTAMENT, *on STAMPED PAPER.*

Know all men from me A. B. of C. Whereas my children (here name the children) *may happen to be within the years of pupilarity and minority at my death, and I have confidence in the friendship and fidelity of the persons after named, for*
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the purpose to be just now specified; *Therefore* I do hereby nominate and appoint, (here the persons are to be properly named and designed) to be tutors and curators to my said children during their respective pupilarities and minorities; declaring the major part of them accepting, and surviving, to be a quorum, and at last any of them surviving, to be sufficient for doing business. With full power to the said tutors and curators, and the quorum of them, to intermeddle with and manage all the means and estate, both heritable and moveable of my children, and to take care of their persons, direct their education, and put them to employments, and bestow so much of their patrimony for these purposes, as I shall appoint; or failing this, as the tutors and curators own discretion shall direct. And to do every thing in the said offices, which by the law they may do, and which I bind my successors to ratify to all concerned. But provided, that though the said persons accept of the office of tutory, they may decline the curatory; and that they shall not be liable for omissions in either of the offices, but only for their actual intromissions; also that they shall not be liable for one another, but each for himself only. And I consent to the registration, &c.

On the head of tutory and curatory, it may be observed, that tutors are either nominated, or tutors of law, or dative. The first is named by a father to his lawful child. He is not obliged to give caution for the faithful discharge of his office. Failing a tutor nominate, there is place for a tutor of law, or the next male relation by the father, who is called agnate. He manages the estate, but the pupil is given to the care of the mother till he be 7 years old, if she be a widow; and failing her, to the next cognate, or relation by her side. The tutor of law must be 25 years of age. He is served, or declared tutor by a jury of sworn men, who are called upon a brief from the chancery, and this before any judge having jurisdiction, to whom the brief is directed. He must give security before he enter upon the management.

If the tutor of law do not demand the office, within a year after

after the father's death, or after the failure of the tutor nominated, any person may apply to the king's exchequer, for a tutory dative.

But the gift of this tutory cannot pass, without the citation or consent of the next of kin to the pupil, both by the father and mother; nor till the tutor give security for his faithful management.

If a pupil be without tutors of any kind, the court of session, at the suit of any kinsman, names a factor or steward for the management of the pupil's estate, who must conduct himself by the rules laid down by the court.

As to curators for managing after the years of pupilarity, or 14 in males, and 12 in females, are over; they are imposed by law upon minors, by being named by the father, while he is in a state of health; and while the father himself is alive; as he is the constant administrator for his children. But failing these two cases, and if the minor chuse to be under the direction of curators, he must raise from the clerk of court, and execute a summons, or edict, citing at least two of his next of kin, to appear before his own judge ordinary, upon nine days warning. At the day and place of appearance, he offers to the judge, a list of those whom he intends to be his curators, such of them as are to act, must sign their acceptance, and give caution; upon which an act of curatory is extracted for their warrant.

When a pupil, or minor has no tutor or curator, and has an action at law to carry on, the judge appoints a tutor or curator for him to concur with him in the process, and take care of his interest; and when the process is ended, the office is also at an end. Women cannot be tutors of law, and married women cannot be tutors or curators at all. Papists also are incapable of being either tutors or curators.

Both tutors and curators, previous to their administration, must make a judicial inventory of the minor's whole estate, personal and real, subscribed by them and the next of kin before the judge ordinary. Of which, one duplicate is to be kept by the tutors or curators themselves; and the other two, by the
next

next of kin on the father and mother's side. If any estate of the minor's come afterward to their knowledge, they must add it to the inventory within two months after they get the possession. If they neglect this, the minor's debtors are not obliged to pay them, and they may be removed from their offices as suspected.

Deeds by pupils, or by minors having curators without their consent, are null; but they oblige the granters, in as far as relates to sums profitably applied to their use. A minor indeed, can make a valid testament by himself, without his curators, but whatever is executed in the form of a deed among the living, requires the curators consent. And deeds of a minor who has no curators, are effectual and valid, even to the alienation of his heritage, without the interposition of a judge, if they be not hurtful to him.

The persons of pupils are secured from imprisonment for civil debts.

Minors may be restored against all deeds granted in their minority, that are hurtful to them; whether granted by a tutor in his pupil's affairs, or by a minor who has no curators; or though they be granted with his curator's consent. For which end, he must execute a summons for reducing the deed, before the court of session, ere he is twenty five years old; else he will be excluded. And before this process, he may make a formal deed of revocation, and put it on record. The model of such a deed is this.

REVOCATION of DEEDS in MINORITY by the GRANTER
after his age of twenty one years.

Know all men from me A. B. of C. Whereas I am now twenty one years old, but during my minority I was induced to grant and subscribe the deeds after specified, viz. (here narrate the deeds in a proper and comprehensive manner.) And seeing those deeds were granted by me to my great hurt and damage, and without a necessary or adequate cause granted to me for the same; against which, I may now by the law be restored wholly; therefore I have revoked, and I do hereby revoke and annul

annul all and each of the said deeds as fully as if they were herein at length specified and recalled, with all that has followed, or may follow thereon; dispensing with the generality of this, and holding the same to be every way sufficient. And I protest that I shall be restored altogether against the said deeds and each of them, and against all the consequences thereof, whether for recovery of the money I gave out or for damages, interest and expences sustained by me on those heads. And I consent to the registration hereof in the books of council and session, or others competent for preservation and publication, &c.

Now that we are upon revocations, we may give an example of one by a wife of a gratuitous deed in favour of her husband. And in explanation of this, it may be noticed, that pure gifts or donations between a husband and wife, to one another, are revocable, and may be recalled by either of them. The wife's ratification on oath of a deed of gift by her to her husband, would not bar her from revocation. But if the donor die without revocation, the gift becomes absolute. A right may be revoked by an explicit recal of it, and by conveying to another the subject of the gift, or burdening it with debt to a third party. Where the gift is not pure or absolute, but a rational or remuneratory deed, as a natural provision by the husband to the wife, or a mutual contract for reciprocal considerations, the same is not revocable.

REVOCATION *by a WIFE, of a DEED of GIFT to her* HUSBAND

Know all men from me A. B. spouse of D. B. of C. Whereas I am well informed that by the law and practice of Scotland, all deeds of gift by married women to their husbands may be revoked and annulled; especially those which make to the grantor's own loss and damage. And whereas I was induced by the importunity of my husband to grant him a deed of conveyance (here narrate the deed in a proper manner,) as the deed itself more fully bears. Which deed was granted by me, without a necessary cause, or a mutual consideration, but only as a

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pure

pure gift, and I find by the consequences, that it is highly proper for me to recal this deed; *Therefore* I have recalled and revoked, and I do hereby for the advantage of myself and my family, recal, revoke and declare null, the foresaid deed of gift and conveyance in the whole and in every part, as fully as if the same had never been made or granted by me. And I protest that I shall be restored wholly against the same, and against all that has followed or may follow thereon for ever, as the law directs. And I consent to the registration hereof in the books of council and session, or others competent for preservation and publication, &c.

CONTRACTS of MARRIAGE

Marriage is the lawful union of a man and woman during their lives. This society produces to the husband full right to all the wife's moveable subjects, and to the rents of her lands and heritable claims, without any other formality. The husband may in the contract renounce this right and power, and a stranger may convey an estate to the wife to be free of this power. From this right of the husband are excepted, the wife's paraphernal goods, or wearing apparel, and her ornaments, and whatever is given her by the husband, at or before marriage, as paraphernal goods. The husband is liable for all his wife's moveable debts contracted before the marriage, but after the marriage is dissolved, and the society goods divided, he is no longer liable for her debts, unless his own estate be affected for them by compleat legal diligence; or unless he has been a gainer, by getting a large portion with her. And he is liable only subsidiarily, after her separate estate is exhausted. But he is not liable for such other debts as would not have come to him during the marriage, such as a bond bearing interest. He is bound only for the bygone interests of those debts.

When the marriage has subsisted a year and a day, and is dissolved without a child alive at the time, the moveable goods in communion are divided into two parts. The survivor gets one half of the free gear, and the relations of the party deceased gets

the other. But if there is a child alive at the death of the father, the child gets two thirds, and the mother one third of the effects. And if the mother die first, the child gets one third, the father two thirds.

If the marriage be dissolved within a year and day after it takes place, and without a living child thereof heard to cry, and without a written contract, all rights granted in consideration of the marriage become void, and things return to the same condition, in which they stood before marriage.

But if there be a written contract of marriage, it will be the rule by which to determine every thing, and it should be executed before the bans of marriage are proclaimed. The parties and the children will be onerous creditors, and be preferred in competition with other creditors, according to the diligence they do, or the legal means they use on the contract, for payment. All reasonable articles and provisions agreed to in the contract, will stand good, if they be not contrary to the public law, or good manners.

But whether there be a contract or not, the wife's person is free of diligence for debts, or fines, during the marriage, and she cannot be sued in any process without her husband be called, as her head and curator. Nor can she bind herself effectually in any bill, or personal obligation.

Now, a contract of marriage is an agreement of the man and woman concerning themselves, and their children, in the view of marriage and its dissolution. It should be written on stamped paper, and in clear and expressive terms. Its general form is this. The names and designations of the parties, their consent to the marriage, the provision for the woman, either in life, if there be a child of the marriage, or both a life and part of the substance, if there be not a child, at its dissolution, then the provision for the children, and all this in full of every other claim. Then the conveyance of the wife's money to the husband, and a provision for the subsistence of the contract. The nomination of persons to execute it, and a mutual penalty. Clause of registration, &c.

The writer should consider, who are to be the parties, whe-

ther, the man only, or he with consent of his father, &c. on the one part. And whether it is to be the woman only, or she with consent of her father, &c. on the other part; and to mention them properly; then what is to be provided in the events, and in the train abovementioned.

CONTRACT of MARRIAGE *in the case of*, MOVEABLE SUBJECTS *only*.

It is agreed and contracted between A. B. merchant in stirring, as husband, on the one part, and C. D. daughter of the now deceased E. D. mason in Falkirk, as wife, on the other part, to the following effect. The said A. B. and C. D. having mutual affection for each other, bind themselves to be married as husband and wife, with all convenient speed. And in the view of this marriage, the said A. B. binds and obliges himself, and his heirs and executors, if he die before her, leaving a child of their marriage alive at the time, to provide and secure, as he now does provide and secure the said C. D. while she lives and remains a widow after his decease, in an annual rent or yearly duty of thirty pounds, lawful money, free of all burdens whatever, payable out of the first and readiest of all his goods and gear, money and effects. And this at two terms whitsunday and martinmas each year by equal portions. Beginning the first payment at the first of those terms after his decease, and so forth, with three pounds of penalty for each term's portion in case of failure. And in this event also, the said A. B. provides and conveys to the said C. D. the third part of all the household furniture, which shall belong to him, or be in the communion of the marriage at his decease, to be enjoyed and disposed of by her as the absolute proprietrix of the same. But if it happen, that she take to herself another husband, in that case, her said annuity of thirty pounds, is, after her second marriage, to be restricted to twenty pounds only. And in the said event of his dying before her, leaving a child or children of their marriage, the said C. D. provides and conveys to the said child, if but one, or to all the children equally, if more than one, and failing any other settlement by him, all his goods and

and gear, claims and sums of money whatsoever, and where-
soever, with the burden of the said annuity to their mother,
and of the said A. B's other just and lawful debts, and the
maintenance of the family till the first term of whitfunday or
martinmas after his decease. Declaring the amount of his
said effects at present to be, one thousand pounds, lawful mo-
ney. And he binds and obliges himself, and his successors to
warrant the above provision and conveyance to said C. D, at
all hands, and to the children of their marriage, from his own
fact and deed. But if it happen, that the said A. B. die be-
fore the said C. D. without a child of their marriage alive at
the time, then he not only provides and secures to her, the
said liferent annuity of thirty pounds, but also the principal
sum of two hundred pounds, lawful money, payable at the se-
cond term of whitfunday or martinmas after, his decease, with
forty pounds of penalty in case of failure, and the interest thereof
after the said term of payment till payment. And further, to
deliver to her at his own decease, as much more of the said
household furniture, as will make one half thereof in all. And
this he also binds himself to warrant to her at all hands. Which
provisions, the said C. D. for herself, and her children, and near-
est relations, accepts in full of all that she or they can ask or
claim by the said A. B's decease, and she discharges him, and
his successors accordingly. *For which causes*, and on the other
part, the said C. D. assigns and dispones to the said A. B. all
her moveable goods and gear, claims, and sums of money,
with the vouchers thereof, which she now has, or may here-
after acquire, or succeed to during the marriage. Particularly
she conveys to him the sum of three hundred pounds, lawful
money, due by the bond of G. H. of I. to her, dated

and payable at Whitfunday thereafter, also the
interest of the said sum, bygone and to come, with the pen-
alty, and the bond itself, and all that has followed, or may fol-
low upon the same, or the other subjects of this assignation.
Which assignation she binds herself to warrant to him, from
her own fact and deed. And it is agreed by both parties that
this contract, and the provisions thereof shall subsist and be ef-
fectual

fectual, although the intended marriage be dissolved within a year and day after the solemnization thereof, without a living child of the same, existing at the time. Any law to the contrary notwithstanding. They also agree, and appoint R. S. and T. W. jointly and severally, with full power to see and to cause the provisions in this contract, to be carried into execution and effect, without any objection or restraint. The parties further agree, and bind themselves to perform their several parts of the premises, one to another, under the penalty of fifty pounds, lawful money, to be paid by the failer to the other party, over and beside performance. And they consent to the registration hereof in the books of council and session or others competent, that horning on six days charge, and other execution as accords with the law, may pass hereon; appointing for that end, &c.

CONTRACT *of* MARRIAGE *in the* CASE *of* a HERITABLE SUBJECT.

It is matrimonially agreed and contracted between D. B. eldest son and heir of A. B. of C. with the consent of his said father, as husband, on the one part, and I. F. daughter of E. F. of G. with consent of her said father, as wife, on the other part, in manner following. The said D. B. and I. F. having mutual affection for each other, bind themselves to be married as husband and wife, with all convenient speed. In contemplation of which marriage, and in consideration of the marriage portion aftermentioned, the said A. B. reserves to himself, during his life, the sum of two hundred pounds, lawful money yearly, to be uplifted and paid him punctually, at martinmas and whitsunday each year, by equal portions, out of the first and readiest of the rents and profits of his land and estate of C. after described; and he reserves to himself the possession of the houses and inclosures which he at present occupies. And then with this reservation, he disposes and conveys to the said D. B. his son, and the said I. F. in conjunct fee and liferent, for her liferent right and possession only, of two hundred pounds, lawful money, of the rents and profits of the said estate,

state, to be uplifted yearly during her life, if she survive the said D. B. and this at the terms and by the proportions each year as above specified, to the said A. B; and to the said D. B. and the heirs male of the marriage; who failing to the said D. B's heirs male whomsoever; who also failing, to his heirs or assignees whomsoever, absolutely and irredeemably, all and whole (here the lands are to be described as in the father's infeftment). And all right and interest which the said A. B. has or may claim to the said lands, in time to come. And under the foresaid reservation, he binds himself and his successors, to vest and seize the said D. B. and I. F. in conjunct fee and liferent, for their several interests above specified, and the heirs male of the marriage, who failing, the said D. B's other heirs male, who also failing, his other heirs or assignees whomsoever, in the said lands and estate with the pertinents, heritably and irredeemably. And this, by two infeftments and manners of holding; one of which to be holden of the said A. B. and his successors, in free blanch, for payment of a farthing, lawful money, in name of blanchfarm, at whitsunday yearly, provided the same be required; and for relieving them at the hands of the superior of the said lands and estate, of the duties and services payable to him forth of the same; and the other of those infeftments, to be holden from the said A. B. and his successors, of their said superior, by the same tenure whereby he himself holds of him. And for obtaining the said infeftment by resignation, the said A. B. makes and constitutes
and each
of them his procurators, for him, and in his name, to resign and surrender, as he now under the foresaid reservation resigns, gives up and surrenders all and whole, (here again the lands &c. are repeated.) And all right and interest which the said A. B. has or may claim to the said lands and estate, *into the hands* of his immediate superior of the same, at the time, or of his commissioner impowered to receive resignations in his name; *in favour* of the said D. B. and I. F. and for new infeftment to be reassigned to them in conjunct fee and liferent, for her liferent right and possession of the said two hundred pounds yearly,

yearly, if she survive him, to be uplifted and taken out of the said rents, at the terms and by the proportions above mentioned, and to him, and the heirs male of the marriage, who failing, to the other heirs male of the said D. B. who also failing, to his heirs and assignees whomsoever, heritably and irredeemably, in due and competent form. And thereupon, instruments and documents to call for and receive, and to do every other thing which the said A. B. himself might do if he were present, and which he engages to hold firm and stable without revocation. And he binds and obliges himself and his successors to warrant and secure the lands and others above disposed to the said D. B. and I. F. and their above named, from all facts and deeds done or to be done by him in prejudice of the present settlement; and also to free and relieve the same of all public and private burdens, with which they are affected at the date of this deed, which is the time of the said D. B.'s entry to the possession of the premises. Further, the said A. B. assigns and conveys to the said D. B. and I. F. for their several interests, and to their above named, all and singular the writings and securities of the said lands and estate, with all that hath followed, or may follow on the same; and also the rents and profits of the premises in all time to come; hereby binding himself and his foresaid to warrant this assignation to them, also from his own fact and deed. And he herewith delivers the foresaid writings and securities to his said son, in order to be kept and used by him, as his own evidences in time to come. Moreover, the said A. B. desires and requires, &c. (here insert a suitable precept of seisin) *Furthermore*, the said D. B. binds and obliges himself, to provide the half of all lands, tenements, and other heritable rights and subjects, which he shall acquire, or succeed to during the marriage, to himself and the said I. F. and their foresaid in the manner and to the end, as the said land and estate of C. is settled. And in case the said I. F. shall outlive her promised husband, he assigns and transfers to her the half of the household plenishing and furniture, which shall belong to him at his decease, to be intermeddled with and disposed of, at her pleasure, free of all debts

debts and burdens whatsoever. Which provisions, in favour of the said I. F. she with her father's consent, accepts in place of the terce or third of lands, and the third or half of the moveables, which otherwise might have accrued to her by the death of her husband, or that her executors and nearest of kin might have claimed by her own death, in the case of his survivance. And the said D. B. with his father's consent, binds and obliges himself, and the heir male of the marriage, who failing, his other heirs above designed, to make payment to the rest of the children, to be procreated of the marriage, of the sum of two thousand pounds, lawful money, at the terms and in such divisions, as he shall afterward in writing appoint; failing which, it is to fall to them by an equal division. And in the mean time he is to maintain and educate the children in a proper manner till their portions become due. *On the other part*, the said E. F. obliges himself and his successors to pay to the said D. B. or his heirs or assignees, in name of dower with his betroathed spouse, the sum of two thousand pounds, lawful money, at the term of whitsunday next year, with four hundred pounds of penalty in case of failure, and the interest of the principal sum from the date hereof, during the non-payment. And it is agreed, that execution shall pass on this contract, at the instance, of against both parties, for implementing their several parts of the premises to one another. Registration for preservation, and execution on a charge of six days.

There is no end almost of making suppositions, and forming clauses in contracts answerable to those suppositions; but the writer will exercise his own good sense on the subject, after knowing the intention of the parties, and the terms they desire.

CONTRACT or INDENTURE between a MASTER and SERVANT.

It is agreed and indented between A. B. merchant in C. as master on the one part, and D. E. son of F. E. writer in G. as apprentice, with consent of his father as his cautioner, who takes burden on him for his son, on the other part, to the fol-

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lowing effect. The said D. E. binds himself to be an apprentice to the said A. B. at his art and business as a merchant, and this for seven years from and after the date of this deed, which is the time of his entry. During which space, the said D. E. binds and obliges himself to serve and obey his master faithfully and honestly, and not to absent himself from the service or business, by night or day, without leave from his master asked and obtained. Also to abstain from all idle and profane company, bad and vicious practices, and to behave himself civilly and discreetly to his master and his family. Likewise to furnish and maintain himself sufficiently in body cloaths and washing during the apprenticeship. And further, to pay to his said master the sum of lawful money, as the agreed apprenticeship-fee with him. The half thereof within eight days after this date, and the other half at the end of three years after this date, with the legal interest thereof from the term of payment until the same be paid. And for the performance of all this on the part of the apprentice, the said F. E. becomes bound jointly and severally with his son to the said A. B.; but this they do in consideration of the master's part after specified. *For which causes*, and on the other part, the said A. B. binds and obliges himself, and his successors, to teach and instruct the said D. E. in every part and point of his said art and business as a merchant, known to himself, and to make him understand the same, in so far as he is capable and willing to be instructed. Also to furnish him sufficiently in bed and board, and to use him well, during the said apprenticeship. And both parties bind and oblige themselves to fulfil their several parts of the premises, one to the other, under the penalty of to be paid by the failer to the other party, over and beside performance. And they consent to the registration hereof in the books of council and session, or others competent, that horning on six days charge, and other execution as affires pass hereon, &c. in common form.

It is obvious that the parts of this indenture are, 1st, The names and designations of the parties. 2d, The obligation on the part of the apprentice. 3d, The obligation on the part of the

the

the master. 4th, The mutual penalty in case of failure. 5th, The registration and subscription. And from this example, an indenture to any other business may be easily formed.

It should be observed, that beside this Contract being written on stamped paper, there is a duty to government on the apprentice-fee, of sixpence on the pound, for fifty pounds or under, and a shilling for apprentice-fees above this, which must be paid, and the indenture stamped, within six months of the date under the penalty of forfeiting the double; half to the king, and half to him who shall sue for the same within 12 months after expiration of the indenture. The whole apprentice-fee must also be put down in the indenture, under the foresaid pain. In default of either of these cases, the apprentice loses all benefit from the indenture and apprenticeship; and if the master neglect to pay the duty in due time, he forfeits fifty pounds, one half to the king, the other to him who shall inform and sue for same. The apprentice-fee given with those educated in hospitals, or houses of charity, or at the public charge of a parish, or township, is exempted from this duty.

All masters have a power of moderate chastisement over their servants and apprentices; but it is a justifiable reason for an apprentice to desert, that the master fraudulently conceals from him the trade to which he is put, or employs him for ordinary about other business.

If the apprentice die before the time is run, the whole apprentice-fee is due, because the master is not in fault. If the master die, the apprentice is bound to serve out his time with his representatives, who keep one capable to instruct him, and the whole fee is due in this case. But otherwise, restitution of the fee is competent, in proportion to the time which was to run at the master's death, with a recompense for want of the freedom.

When the apprenticeship is fulfilled, and the indenture is to be discharged, it may be done in this form on the back of it.

P. 14. July 1786. I have received the performance of the

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apprentice's

apprentice's part of the within indenture, therefore I discharge it, and deliver it up to him.

A. B.

A SUBMISSION, or CONTRACT of SUBMISSION.

The parties following, A. B. of C. on the one part, and D. E. of F. on the other, have agreed to submit and refer, and they do hereby submit and refer themselves to the amicable decision and final sentence of G. H. of I. and K. L. of M. as arbiters mutually chosen by them, concerning all differences between them, and claims of either party against the other, at and preceding this date. As the same shall be specified in the written claims of the parties to be by them subscribed and given in to the arbiters, and which are held as here repeated. With full power to the arbiters, to compel and receive from both parties, all manner of information and evidence in the matters to be laid before them, whether by witnesses, writings, or oaths of parties. And upon the whole to deliberate and determine, as to them shall seem to be just and equal. And with power to the said arbiters, in case they do not agree between themselves, to appoint an overfman to consider and determine in the whole affair as fully and freely, as the arbiters themselves might do. And to subscribe their sentence or decret, either on the rest of this sheet, or on a separate paper, on or before the day of next. And whatsoever the said arbiters or overfman shall so determine and declare, the said parties bind and oblige themselves to stand by, and to fulfil, without any objection, under the penalty of to be paid by the failer, to the other party, over and beside performance. The said parties also declare and bind themselves that this submission and contract, shall not fall, by the death of either of them before sentence, but shall subsist and be effectual against their heirs and successors. And they consent to the registration hereof, and of the decret arbitral to follow hereon, in the books of council and session, or others competent, that horning on six days charge, and other execution as accords, may pass hereon, &c. in common form.

Such

Such a submission is written on stamped paper, and the time of its endurance, is for a year before sentence. If the parties do not declare and bind their successors as well as themselves, the submission falls, like a mandate, by the death of either of the submitters. A general submission of this kind, is understood to authorize the arbiters to decide upon questions not only of moveables, but of heritable bonds. And the claims given in and subscribed by the parties determine the extent of the arbiters powers. If the arbiters pronounce judgment on all the articles claimed on the one side, and leave all those on the other undetermined, the decree is null. The form of a decree arbitral, requires nothing in particular, save only that the arbiters declare, that they have God and a good conscience before their eyes. At the same time, the omission of those words is no nullity. Arbiters are not tied to the strict rules of law, but may and ought to proceed according to equity and a good conscience, and they may use any mean of proof sufficient to convince them, though it is not competent in point of law. The decree arbitral stands good, and is not reducible on any ground, but those of corruption, bribery or falsehood. It should also be now considered, that there is a duty to the king laid upon an award, which is a decree arbitral, and that it is safest to write such decrees upon stamped paper, especially where the subject is of any considerable value.

DECREE ARBITRAL, *or* AWARD, *on the said SUBMISSION*
when it is written at the end of it.

We G. M. and K. L. arbiters appointed by the foregoing submission, having considered the matters referred to us, with the evidence laid before us by the parties, and having God, and a good conscience before our eyes, we ordain the party A. B. to pay to the other party D. E. the sum of in full of all demands or claims between them, and this within one month after this date, with interest thereafter till payment. And on payment of this, we ordain the parties to discharge each the other in proper form. In witness whereof, &c. in common form.

IF

If the arbiters do not agree, they appoint an overfman, in the following manner, at the end of the submission.

We G. H. and K. L. arbiters appointed by the aforefaid submission, having taken the matters submitted into confidideration, and not agreeing in opinion on them, we appoint I. T. of W. to be overfman in the whole affair. In witnefs whereof, &c. in common form.

And then the overfman gives fentence as the arbiters might have done.

It is not neceffary that the arbiters, or overfman appoint their decreet to be registered, or to be implemented under the penalty of the submission, becaufe the submission itfelf appoints this.

CONTRACT of SALE of VICTUAL.

It is agreed and contracted between A. B. of C. on the one part, and D. E. merchant in F. on the other part, to the following effect. The faid A. B. hath fold, and doth hereby fell, and oblige himfelf and his heirs and executors, to deliver to the faid D. E. or his heirs, executors, or affignees, five hundred bolls of barley, of the growth of the faid A. B's. eftate of C. of a good and marketable quality, and lawful meafure, and this of the crop one thoufand feven hundred and eighty fix, and the like quantity for each of the two next crops. And the delivery is to be at the harbour of yearly, on demand, in the firft two weeks of February after reaping each crop, under the penalty of to be paid by the faid A. B. to the faid D. E. for each undelivered boll. *For which caufes*, and on the other part, the faid D. E. binds himfelf and his fucceffors, to pay to the faid A. B. or his above named the fum of fifteen fhillings lawful money for each boll of the faid five hundred bolls of barley each of the faid three years, at the firft day of April yearly, with a fifth part more of penalty in cafe of failure, and the intereft of the faid principal fum from the term of payment during the non-payment. And both parties confent to the registration hereof in the books of council and feffion or others competent that horning on fix days charge, and other execution as afferes, may pafs hereon, &c. in common form.

After

After the same manner, may be formed any other contract of this sort; as for the sale of wood, or any other thing.

CONTRACT of COMMUNICATION of HERITAGE and MOVEABLES *between an HEIR and EXECUTOR.*

It is agreed and contracted between A. B. now of C. eldest son and heir of the now deceased L. B. of C. on the one part, and F. B. second son and executor of the said L. B. on the other part, as follows. Whereas the said A. B. is willing to renounce his exclusive claim as heir to the said estate of C. and betake himself to his right as one of the next of kin to his said father, upon the whole substance which belonged to him, therefore the said A. B. as nearest and lawful heir to his said father, now as if he were entered and infefted in the said estate, and then as now, doth hereby assign and dispone to the said F. B. his brother, the free half of the said estate of C. and of all heritable debts and heirship which belonged to the said L. B. at his death; dispensing with the generality of this, and admitting the same to be as valid as if every particular of the said half were herein set down. And for this end, he binds himself to complete his right and title to the premises, without delay, and then to implement this obligation, and make the subject, or the full value thereof in money, forthcoming to the said F. B. *For which causes*, and on the other part, the said F. B. accepts of this collation and disposition, and he assigns and disposes to the said A. B. and his aforesaid all right and interest whatsoever, which he as executor or nearest in kin to the said L. B. has or can have to the half of all the moveable goods and gear, claims and sums of money which were due to the said L. B. at his death, and the vouchers thereof. Dispensing likewise with the generality of this, and admitting the same to be sufficient. And the said F. B. binds himself and his foresaid, to make up his right and title to all the said moveable subject, without delay, and to make the half thereof, or the full value of the same in money, forthcoming to the said F. B. or his above named. And both parties bind
and

and oblige themselves to perform their several parts of the premises to one another under the penalty of fifty pounds sterling, to be paid by the failer to the other party, over and beside performance. And they consent to the registration hereof, &c. in common form.

The heir in the heritage of a person, has no share of the moveables; but if he find it his interest, he may collate or communicate the heritage with the other nearest of kin, who must in this case, collate the moveables with him. And so the whole is thrown into one mass, and divided equally among them.

CONTRACT of COPARTNERS in BUSINESS.

It is agreed and contracted between A. B. and C. D. both merchants in E. on the one and other part, to the following effect. Whereas the said parties apprehend that it will be for their mutual convenience and interest, to enter into partnership in the business of merchandizing, to which they both have been bred; and whereas they have confidence in one another; and the said A. B. hath twice as much money to put in to the joint stock, as the said C. D. hath; but the latter is to make up in diligence and labour, in the partnership, what he wants in money; so that they both are to enter into business, and be reckoned in all respects as entering upon an equal footing with each other; therefore the said parties agree, and bind themselves to join in partnership under the name and firm of A. B. and C. and to carry on the business of merchants, as grocers, and otherwise as they shall deem advantageous. And this for the space of ten years at least, if they live so long, from and after the date of this deed. And the said A. B. engages himself to advance and put into the common stock the sum of one thousand pounds, lawful money, without any delay, as his share of the capital. And the said C. D. binds himself to advance and pay into the said capital the sum of five hundred pounds, and to bestow double the time of the said A. B. with all the ability and honest application he is master of, as his equal share of the said capital. On which capital or stock, they bind

and do the best they can, in order to make what honest and honourable profit they are able therefrom. And all deeds of their partnership, and whatever relates to the company are to be subscribed by the foresaid name and firm of the company. And their books of the business are to be kept in the foresaid name. They also bind themselves to bring forward their whole books, and balance the same, at the beginning, and the middle of each year during the partnership; beside having the several accounts and books ready for inspection, and full information at all times. And they bind themselves to share and divide the gain and loss of all their trade and business, to one another in an equal proportion, without any objection. They also engage not to carry on any separate business from the company, and not to do any thing hurtful to the partnership. They further bind themselves and declare, that if they continue in partnership, after the expiration of the said ten years, it shall be understood and taken by themselves, and all others concerned, that they continue on the same terms as herein mentioned, unless they declare otherwise by a separate writing. Registration, &c.

Partners are united on a choice of persons, therefore no partner can transfer his share to another, without leave from the company. And all benefit procured by one of the partners to himself, in a matter that naturally falls under the partnership accrues to the whole. No partner is accountable for an error in management, arising from the want of a larger share of prudence or skill, than he was truly master of.

All the partners are bound by the obligation of any of them, if he subscribe by the firm or social name of the company, and if the matter fall under the common course of administration. The company effects are the common property of the society, and subject to its debts. No partner can claim a division of the effects, even after the society is dissolved, till the debts be paid. The creditors of the company are preferable, on its effects, to the creditors of a partner; but a creditor of the latter may secure his debtor's share by arrestment.

The society or partnership, is naturally dissolved by the death
T of

of any partner, if it be not otherwise provided. And any of the partners may renounce his share; but if it be upon unfair views, or at a critical time, when his withdrawing may be fatal to the partnership, this looses his partners from all their engagements to him, and he is bound to them for all the profits he shall make by his withdrawing, and for the loss arising thereby to the company.

A CHARTER party of AFFREIGHTMENT of a SHIP.

It is agreed and contracted between A. B. shipmaster in C. and master of the good ship, D. of E. on the one part, and F. G. merchant in H. on the other part, to the following effect. The said A. B. for the consideration aftermentioned, doth hereby grant, and to freight let out, to the said F. G. the fore-said ship D. now riding at anchor at I. with her pertinents, for plying and performing the voyage after-specified, *viz.* to sail from the port of I. on the day of next, or as soon thereafter, as wind and weather will permit, with such a cargo of the ordinary weight and safety for her carriage, as the said F. G. or his order shall load her; and to proceed to the port of K. and there unlade the cargo, and continue six ly days; and to receive on board another cargo from the said F. G. or his order; and with this cargo to proceed, wind and weather serving, to the port of L. and there unlade the same; and continue four ly days, and receive on board a third cargo from the said F. G. or his order; and with this to return to the port of I. and unlade the same to them, when the voyage is to be finished. For which purpose, the said A. B. binds and obliges himself to have his said ship in good condition and ready, at the said day of next, well manned and provided with every thing necessary for such a voyage. Also to keep the ship in sufficient repair, and good order all the time, and perform the said whole voyage and undertaking to the said F. G. according to good faith and the declared intention of the freighter. Likewise to grant bills of loading in the meantime for all the effects he shall receive on board the said ship, and to deliver those effects or cargoes in good order and full tale

tale at the several ports, without any hurt, except from sea hazard, if such do accidentally happen to the ship and goods. *And on the other part*, the said F. G. binds and obliges himself, and his heirs and executors, to pay to the said A. B. or his owners, or their heirs and executors, the sum of one hundred pounds, lawful money, of freight, wages, and in full for all expences, on account of the said whole voyage, and three cargos. And if any misfortune accidentally happen to the said ship, so as the said voyage cannot be performed, the said F. G. becomes bound to pay a proportion of the said freight up to the time of the accident, without any objection, and also to pay the said A. B. ten shillings, lawful money, of demurrage for every day the said ship shall be detained at the said ports of K. and L. after the ly days above specified. Lastly, both parties bind themselves to perform their several parts of the premises to each other, under the penalty of twenty pounds, to be paid by the failer to the other party, over and beside performance. And they consent to the registration hereof, &c. in common form.

Charter parties are construed, as near as may be, according to the intention of them, and not according to the literal sense of traders, or those who merchandize by sea. By the law marine, and course of the admiralty, if any of the owners of the ship refuse to join with the other owners in setting out the ship, he shall not be intitled to his share of the freight. For otherwise, there would be no navigation.

Owners of ships are answerable for the acts or imbezlements of the master or mariners, without their knowledge, only to the extent of the ship and freight. And if several persons suffer damage, and the value of the premises will not satisfy them all, they shall receive satisfaction on an average, in proportion to their respective losses.

A master of a ship needs no written commission for this office; his being allowed to act, implies full commission and authority, and his deeds bind the owners in all respects.

When masters of ships meet with storms at sea, so as they are obliged, for saving their lives, and the cargo, to throw some of the goods over board; or when the water gets into

the hold of the ship, and may damnify the goods, they protest against the storm, wind and weather, at the mainmast, and and take some of the crew as witnesses. In either of these cases, as soon as the ship arrives at any port or station, the master comes ashore, and brings his witnesses with him, before a magistrate or justice of the peace, and a notary public. The witnesses make oath to the fact, and an instrument of protest is formed, which the witnesses, and the judge, and also the notary do sign before other two subscribing witnesses. Which saves the master and owners from being liable for the damages which happen by the storm. The form of the instrument is this.

INSTRUMENT *against* WIND and WEATHER.

At D. The tenth day of June one thousand seven hundred and eighty six. In presence of me notary public and the witnesses subscribing, appeared L. M. master of the ship or brig, called the O. of P. and with us passed to T. W. esq; one of his majesty's justices of the peace for the county of Y. and represented, That the said L. M. as master of the said ship, had sailed with her in good condition, from the port of S. for the port of T. and in his passage on the third day of June current, about the hour of three o'clock afternoon, in the latitude of 56 degrees and 30 minutes, there arose or happened a prodigious storm of wind and rain, which continued for the space of three hours. And the ship being in great hazard, and several times near overfet, he having advised with his mate and crew, concluded there was no probable way to save their lives, or the ship or cargo, but by lightening her, and throwing some of the heavy goods over board. Accordingly, he and they were necessitated to throw over the following goods, (here the goods and their marks are particularly mentioned.) Whereupon he in presence of the mate and crew protested at the main-mast against the wind and storm, and that it was the greatest hazard and necessity which made him lighten the ship, and throw the goods above mentioned, over board into the sea. And that therefore he and his crew should be free of the damage and loss there-
through

through sustained. As it could not be imputed to any defect, or fault in the ship or mariners, but only to the storm. And for verifying what he represented, he adduced F. and G. two of the mariners on board the ship with him, and desired the said T. W. esq; to take their oaths on the facts above represented. And the said T. W. esq; having solemnly sworn and examined the said witnesses, they deponed, that the facts above related by their said shipmaster, are real and true, as they shall answer to God. Whereupon the said L. M. of new protested against the said storm, and that he and his crew shall be free of the damage and loss of the goods thrown over board, from the necessity of the case. And thereupon he took and required instruments under the hand of me the notary. These things were done before I. K. and G. H. both residents in D. witnesses required to the premises.

VENDITION, or DISPOSITION of a SHIP.

Know all men from me A. B. shipmaster in C. and sole owner and master of the ship D. of W. now riding at anchor in the port of E. that for twenty five pounds, lawful money, now paid to me by F. G. merchant in K. as the price of a sixteenth part of the said ship, of which he is discharged, I do hereby vend, dispose and convey to the said F. G. and his heirs, or assignees, all and whole a just sixteenth part, of the said ship, or brig, with a proportional part of her masts, sails, anchors, boats, and other parts and pertinents; and of all right and interest, which I now have, or may from this date claim to the said share and the pertinents thereof. I also assign and convey to him the sixteenth part of all the freights and profits of the said ship from this date, and bind myself, while I am master, to count for and pay the same to him at the end of every voyage. And I bind myself and my successors to warrant the said sixteenth share of the premises, to the said F. G. and his above named from all facts and deeds of mine. And I consent to the registration hereof, &c. in common form.

Ships, though moveable goods, cannot be pointed for debt, they may be arrested, and brought to sale in an action before the

the admiral court. And if a ship, bound for a voyage, and under charter party, is arrested, the arrestment will be loosed upon caution found, or even a simple enactment in the admiral court books, to answer the suit on her return.

Goods on board of ships cannot be poulded, but only arrested.

And as to the judicial sale of ships, this can only be by the major part of the owners; but any one of them may sue an action of set before the admiral, as to his own share; whereby he can oblige the rest to take his share at the price he sets it up at, or allow him to have their's at the same price.

By law, if a passenger deliver goods to the master, or mate of a ship, or enter them into the ship's books, the shipmaster, and his employers are liable for them; and in case of loss, the extent of the damage may be proved by the owner's oath.

DISPOSITION of MOVEABLES

Be it known to all men by this deed, that I, A. B. farmer in C. for a certain sum of money paid to me by D. E. farmer in F. of which he is discharged, I have sold, and do hereby *sell, assign and dispose* to the said D. E. and his heirs and executors, all and sundry my moveable goods and gear upon the ground or possession of C. at present in my occupation, *viz.* four horses, two carts, two ploughs, six harrows, six cows, six oxen, forty sheep, ten bolls of oats twelve bolls of barley, four bolls of pease, ten sacks, two canvasses, and the pertinents of the said carts and ploughs; also the sowing of my arable land for the ensuing crop, and all right and interest which I have or may claim to the premises. With full power to him and his foresaid, to do every thing therein, as the absolute proprietors of the same. Providing only, that the said D. E. pay the rent of the said arable land for the said crop, and relieve me thereof. And I bind myself, and my successors to warrant the premises to the said D. E. from my own fact and deed. I have also herewith delivered the possession of the said effects to the said D. E. as his own property. Registration, &c. in common form.

If the particulars sold and conveyed, be not enumerated in
the

the deed, but referred to as in a separate inventory, that inventory must be on stamped paper, for which a duty of half a crown is payable.

The term, disposition, is applied to those writs which convey merchandize, corns, plenishing, cattle, and other moveable goods; and the term, assignation, is applied to those which convey sums of money, rents, duties, and the like.

The granter of a disposition, is called the disponer, and the receiver of it, is called the disponent. The granter of an assignation, is called, the cedent; the receiver of it, the assignee.

ASSIGNATION *of a BOND.*

I, A. B. of C. for a sum of money, now paid to me by D. E. of F. of which he is discharged, do hereby *cede* and *assign* to him, and his successors, the sum of two hundred pounds, lawful money, contained in a bond, granted by G. H. of I. to me dated and payable at whitsunday thereafter, also the fifth part more of penalty, and the interest of the said principal sum, since the same was due, and in all time to come; likewise the bond itself, and all that may follow thereon. With full power to him and his aforesaid, to do every thing in the premises as the absolute proprietors of the same. I also bind myself, and my successors, to warrant this assignation to the said D. E. and his successors, from my own fact and deed. And I have herewith delivered the said bond to him, as his own writing in time to come. Registration, &c. in common form.

This assignation, and all assignations of the like sort, should be intimated to the debtor in the bond, as has been formerly observed, in order to complete the assignee's right and security. This should be done, either by a notary public, or by causing the debtor subscribe a letter, owning that he has seen the assignation, and that he holds it as duly intimated to him; or a summons given him will have the same effect. For without, or before the intimation, the cedent might convey the subject to another, who, if he acquired honestly, and made the first intimation, would be preferred to the subject.

After the same manner, may be formed an assignation to any
other

other money. Consider the subject, narrate, or tell how it is due, and the voucher of it, and then assign it over, either in whole, or in part, as the case is.

But when a bond is to be assigned, on which there has been diligence done; it is better to narrate it, and what has followed upon it, in the beginning of the deed, and then assign the debt, the voucher and the diligence, in this manner.

ASSIGNATION of a BOND and DILIGENCE.

Know all men from me A. B. of C. Whereas G. H. of I. by his bond, dated _____ *bound himself and his successors, to pay to me and my successors, the sum of two hundred pounds, lawful money, at whitsunday thereafter, with a fifth part more of penalty in case of failure, and the interest of the principal sum, from the date of the bond till payment. Which bond I caused to be registered in the sheriff court books of F. and thereon raised the sheriff's precept of poinding, &c. In virtue of which I caused charge the said G. H. to make payment to me of the sums of money contained in the said bond. And I also caused arrest his rents for the more security. As an extract of the said registered bond, with the sheriff's precept, and the two executions of charge and arrestment, all dated* _____ *, more fully bear. And seeing D. E. of F. hath paid me a sum of money as the price, or equivalent for the money above and after mentioned, of which he is discharged; therefore I do hereby cede and assign to him and his successors, the aforesaid sum of two hundred pounds, with the penalty, and the interest of the principal sum since the same was due, and in time to come, till payment. Also the said bond itself, with all the diligence already done thereon, and and what may hereafter follow on the same. With full power to the said D. E. and his successors, to do every thing in the premises, as the absolute proprietors of the same. Which assignation I bind and oblige myself, and my successors, to warrant to the said D. E. and his above named, from my own fact and deed. And I have herewith delivered to him, the fore-said extract and precept, and the two executions of charge and arrestment*

arrestment, to be kept and used by him, as his own writings, in time to come. Registration, &c.

It is evident, on considering this whole deed and its parts, that it consists, 1st, of the name and designation of the granter. 2nd, Of a narrative, or narration of the subject beginning with the word, whereas. 3d, A subsumption of the price paid, beginning with these words, and now seeing. 4th, Of an induction, or inference, which contains the conveyance, beginning with the word, therefore. 5, The warranty. 6th, The delivery of the writings. 7th, Registration, &c.

In narrating the subject, or writings, as the introduction to such deeds, we should learn to abridge the writings in a proper manner, and to mention only the essential clauses thereof. Particularly those clauses, which serve to the form and design of the deed which we are making. For sometimes one clause is more particularly regarded, and sometimes another, and to be less or more fully expressed.

If the assignation were to be granted by the heir or executor of the original creditor, his title to that debt, must be specified in this manner.

Know all men from me W. B. of C. son and executor of the now deceased A. B. of C. whereas, &c. To which debt and voucher thereof, I now have right as executor dative, and nearest of kin of the said A. B. conformable to the decret and confirmation of the commissary of D. at my instance, dated

And seeing, &c. in common form.

Assignations are sometimes made and granted by the factors of the creditors, but they must have special powers and warrants by their factories to do this, for otherwise they cannot convey away their constituents effects. In such cases, the factories may be briefly narrated.

Assignations are also sometimes made by minors, with consent of their curators, and by wives with the consent of their husbands. The minors and wives are the principal parties, and mentioned as such through the deed; the curators and husbands only consent. But they all sign the deed. A minor also becomes bound, and the curators join him in the obligati-

on, to ratify the deed when he is twenty one years old. And a wife becomes bound to ratify the deed upon oath, in the absence of her husband. But the husband ought not to join in this, because it has the appearance of compulsion, and she ought to be free in the matter.

From the above examples, an assignation of any subject may be readily formed. But if the assignee is to convey his right to another person, the deed for this is called, a translation. The following is an example.

TRANSLATION of a BOND and ASSIGNATION.

Know all men from me D. E. of F. assignee after specified Whereas, (here narrate the bond as in the assignation; and also narrate the assignation itself, in common form) And seeing, &c. therefore I do hereby sell, assign, and transfer to him, and his successors, the said principal sum of two hundred pounds, and the liquidate penalty, &c. also the bond, &c. and the assignation thereof in my favour. With power to the said, &c. which translation, I bind myself and my successors to warrant from my own fact and deed. And I have herewith delivered, &c. Registration for preservation and execution.

So that there is very little difference between the style of an assignation, and a translation. In the former, it is said, *I cede and assign*. Or, in more words, *I make and constitute the said D. E. and his heirs and assignees, my lawful cessionaries and assignees, in and to the sum*. In a translation, you say, *I sell, assign and transfer*. Or, in more words, *I have sold, assigned, transferred and disposed, and I do hereby sell, assign, transfer and dispose*.

Every conveyance of the subject after this, is called a translation.

Sometimes the assignee restores the right to the cedent, either because he has held it in trust for him, or because the cedent has paid him for it. And this conveyance is called, a retrocession. The following is an example.

Know

A RETROCESSION.

Know all men from me D. E. of F. assignee aftermentioned, Whereas G. H. of I. by his bond dated _____, bound himself and his successors, to pay to A. B. of C. and his successors, the sum of two hundred pounds, lawful money, at whitsunday thereafter, with a fifth part more of penalty, in case of failure, and the interest of the principal sum, from the date of the bond till payment. Which bond was registered in the sheriff court books of F. and the sheriff's precept of poinding and arrestment raised thereon. In virtue of which, the said G. H. was charged to make payment, and his rents were arrested for more security; all upon the _____ day of _____

To which bond, sums therein, and diligence thereon, I have right from the said A. B. by his assignation thereof to me, dated _____. And I have as yet done nothing more for payment, nor have received any of the money assigned. I have only intimated the assignation to the debtor. *And seeing* the said C. B. hath paid me a sum of money for granting him this conveyance, of which he is discharged; *therefore* I do hereby assign and convey to him, and repon and retrocess him in his former right and place, as to the said two hundred pounds, the liquidate penalty, and the interest of the principal sum; and as to the said bond, and diligence thereon, and all that may follow upon the same. With full power to the said A. B. and his successors, to do every thing in the premises, as the absolute proprietors thereof. Then follows the clause of warranty, delivery of the writings, registration, &c.

If the assignee had not intimated the assignation, nor done any other thing on it, the deed might have been destroyed, and the writings assigned, just delivered back to the cedent, without any deed of retrocession.

BACK-BOND by the ASSIGNEE to the CEDENT.

Know all men from me D. E. of F. Whereas A. B. of C. by his assignation dated the _____ day of _____ current, ceded and assigned to me and my successors, the sum of two hundred pounds, lawful money, contained in a bond granted by G.

H. of I. to him, dated and payable at whitfunday thereafter, also the fifth part more of penalty, and the interest of the principal sum till payment; likewise the bond itself, and all that may follow thereon. As the said assignation more fully bears. *And seeing* this assignation was granted to me only in trust, for the behoof and convenience of the said A. B. himself, and his successors, without my paying any money for it, or having the hope of any advantage by it; therefore I bind and oblige myself, and my successors, to denude me or them of the said debt, and the ground thereof, and of what may follow on the same, to and in favour of the said A. B. himself or his successors, whenever the end is accomplished for which the trust is granted. And I now as then, and then as now restore him to his right and place of the premises, and convey to him the said debt and bond, and all that may follow thereon. And I warrant this from my own fact and deed, but providing that all writings to be expedited in this matter and all charges to be disbursed by me, be at the expense of the said A. B. and his foresaid. Clause of registration for preservation, and horning on the warrandice as afferes.

From this example may be formed a back-bond in any trust, or matter whatever.

Of RECEIPTS. and DISCHARGES.

Receipts and discharges, for goods, or the like, pay no duty to the king; those for money only pay. And this duty is two pence for sums of two pounds, up to twenty pounds; then it is four pence. Receipts in full of all demands pay four pence.

Excepting receipts for seamen and soldiers' wages and pensions.

RECEIPT *for* PAYMENT of INTEREST.

Edinburgh, June 10, 1786. Received from A. B. of C. ten pounds, lawful money, as the interest of two hundred pounds for a year preceding whitfunday last, due by his bond to me, dated the fifteenth day of May last year, of which he is discharged by

D. E.
Receipt

RECEIPT *for* RENT.

Edinburgh, June 15, 1786. Received from A. B. my tenant in C. twenty pounds, lawful money, and the receipts of D. E. merchant in F. for fifty bolls of his farm meal and bear of last year's crop, the money being due at whitsunday last for that crop, and therefore I discharge him of the rent for that year and crop, with all precedings. F. G.

RECEIPT *for* FEU DUTY.

Edinburgh, June 15, 1786. Received from A. B. of C. my vassal, five pounds, lawful money, and twelve cocks and hens, as the feu duty payable by him to me for the year preceding whitsunday last, of which, with all preceedings, he is hereby discharged. H. I.

Receipts, or payments marked on a bill or bond, pay no duty, and the debtors may either get this done, or take separate receipts, or both, by referring the one to the other.

DISCHARGES.

When a bond is not registered, or diligence done on it, and it is paid, it may be retired simply, and destroyed, without more ado; or it may be discharged on the back of it, thus.

Edinburgh, June 15, 1786. I the creditor of the within bond, have received payment of it, and therefore I discharge the money and the bond. D. E.

But if the bond has been registered, and diligence done, the discharge thereof must be on stamped paper for such deeds, and in full form as follows:

DISCHARGE *of a* REGISTERED BOND *and* DILIGENCE.

Know all men from me A. B. of C. Whereas D. E. of F. by his bond to me of date the day of one thousand seven hundred and eighty four, became bound to pay me two hundred pounds, lawful money, at the term of whitsunday thereafter, with a fifth part more of penalty, in case of failure, and the interest of the principal sum from the date of the

the bond till payment. Which bond was registered in the books of council and session, on the day of last, for non-payment, and letters of horning raised thereon, of that date. In virtue of which he was charged to pay, and the horning denounced and registered. Upon which I raised letters of caption dated and signeted the day of last. As the said bond, horning, and caption more fully bear. *And seeing* the said D. E. hath paid to me the said principal sum, and the interest thereof, and as much of the penalty as pays the necessary expence of diligence, with all which I am satisfied. *Therefore* I hereby exoner and absolutely discharge him, and his successors, of all the said money, and bond and diligence thereon, now and for ever. And I bind myself and my successors, to warrant this discharge to him and his aforesaid, at all hands, and in every event. I also herewith deliver to him the extract of the said bond, with the letters of horning and caption thereon, as his own writings in time to come. And I consent that he be relaxed from the horn, if need be, and relieved thereof. Registration for preservation, and execution on the warranty, &c.

It is said, that on producing this discharge at the registry, within six months after the date of the extract, the principal bond may be got up, on returning the extract, paying a gratuity to the servant, and giving a receipt.

It will occur, that a discharge may be granted by the creditor's factor, if he hath power and authority to do so; and accordingly he will be designed in the proper relation in which he stands. And so must an heir, or executor, or an assignee.

And if the original debtor be dead, his successor, and the relation he stands into him, must also be properly set down.

For instance, the original creditor was, A. B. of C. who is dead. His executor is to grant the discharge. He would be mentioned thus.

Know all men from me D. B. merchant in E. son and executor dative of A. B. of C. now deceased; and to proceed to narrate the writings or ground of debt. Then add, in and to all which I have right, as executor dative and nearest of kin of the said A. B. decerned and confirmed by the commissary of
D.

D. conformable to his decret and confirmation dated the day of last. *And seeing*, &c. Therefore, &c. And I have delivered, &c. and bind myself and my successors to make the said decree and confirmation forthcoming to the said when he shall have occasion for the same; in regard it contains other subjects, and I can not give it up at present.

Discharges of money due to pupils, are granted by their tutors for them, and the money due to minors, is discharged by themselves, with consent of their curators; of all whom it must be noticed, how many make a quorum, and can act validly.

In discharges of money due to a married woman, tho' in general the husband is the legal assignee by the marriage, to all her moveables, and might validly grant the discharge alone; yet for ordinary, she is considered as the proper person or creditor, and grants the discharge, as she does every deed belonging to what property comes by her, with consent of her husband, and the deed specifies them in that manner. Only, she becomes bound to ratify the deed on oath, in her husband's absence, and she ratifys it accordingly, if it be required. For such a ratification is not absolutely necessary, as was noticed in the other part of this essay.

Discharges of legacies (excepting those to wives children, and grand children) must now be written on stamped paper, paying a duty to government, according to the amount of the sum, which should be noticed at the time.

DISCHARGE of a LEGACY.

Know all men from me A. B. merchant in C. whereas D. E. farmer in F. now deceased, by his testament of date the and registered in the sheriff court books of B. the last, gave and bequeathed to me the sum of fifty pounds lawful money, to be paid by G. H. merchant in I. his executor at the first whitfunday after his death. *And seeing* the said G. H. hath paid to me the foresaid sum, with which I am satisfied *Therefore* I hereby exoner, and absolutely discharge the said G. H. and his successors, and all other representatives of the said

saïd D. E. of the aforesaid sum of fifty pounds, and of the saïd testament, also of all that has followed, or may follow thereon, now and for ever. And I bind and oblige myself and my successors to warrant this discharge to the saïd G. H. and his above named, at all hands, and in every event. Registration for preservation, and execution on the warrandice, in common form.

DISCHARGE by a SON to his FATHER, of his BAIRNS part of GEAR.

Know all men from me A. B. merchant in C. whereas D. B. merchant in F. my father, by his contract of marriage with G. H. my mother, dated , provided and secured to the children of their marriage the sum of lawful money, to be divided among them, as the saïd D. B. should appoint, and payable when they should be married, or be twenty one years old, with interest thereafter till payment. As the contract more fully bears. And seeing the saïd D. B. hath paid to me the sum of five hundred pounds, lawful money, as my appointed share of the saïd provided money, and this in full of that and of every other claim, with which I am satisfied; Therefore I hereby exoner, and absolutely discharge the saïd D. B. my father, and his successors, of the money now received, and of the saïd contract of marriage, and all that has followed, or may follow thereon. And also, of all bairns part of gear; and other claims whatsoever that are now or may be competent to me by the death of my saïd father, or of my mother; with all action and execution which I may have for the same, now and for ever. And I bind and oblige myself and my successors to warrant this discharge to my father, at all hands. Registration, &c.

More examples of this sort are scarce necessary. If one were to discharge another of his intromission, or intermeddling with money or effects, he needs only to narrate the fact such as it is, and then the payment or satisfaction which is given; and then discharge the whole.

Discharge

DISCHARGE *by a MAJOR to his TUTOR and CURATORS.*

Know all men from me A. B. of C. son of the now deceased D. B. of C. Whereas the said D. B. by his deed, of date
, and registered in the sheriff court books of E.

nominated and appointed F. G, H. I. and K. L. merchants in M. to be tutors and curators to me during my pupilarity and minority; and the major part, and the survivor of them, to be a quorum, for doing my business. And with this quality, that they should not be liable for omissions, or for one another, but only each for himself, and his own intermeddling. Also that though they accepted of the tutory, they might decline the curatory. As the nomination itself more fully bears. And whereas they did accept of both the said offices, and continued to manage all my affairs in a diligent and faithful manner during my nonage. *And seeing* they have now held just count and reckoning with me on all their intromissions and disbursements, and have paid to me the balance of money in their hands, conformable to the accounts of the whole stated and signed by us in two duplicates; and they have also delivered up to me the vouchers of those accounts, and likewise all other writings of my estate, which they had in their custody. With all which I am satisfied. And I being now past twenty one years of age, *therefore* I have exonerated and discharged, and do hereby exoner, acquit, and absolutely discharge my said tutors and curators, jointly and severally, and their successors, and all others employed by them in my affairs, not only of the money now received by me, but also of all their intromissions with my means and estate, from the beginning of their management to the end thereof. Dispensing with the generality of this, and holding the same to be every way sufficient to my said tutors and curators, now and for ever. And I bind and oblige myself and my successors to warrant and maintain this discharge to the said F. G, H. I. and K. L. and their successors, at all hands, and in every event. Registration, &c.

It would be proper to put such a discharge into the register, and indeed discharges of all kinds, especially those of hornings, inhibitions and other matters which are on record. Hereby

the debt is met with the credit, or the burden with the relief before the public eye.

Discharges by constituents to their factors, may be easily formed from the above example. And discharges of depending processes, of bonds of interdiction, and all other matters, proceed upon the clear narration of the fact, whatever it is. So that we should in every case think of the fact, and of the writings that have taken place, and are to be discharged and delivered up, and then we will not err. Only, a discharge of an interdiction cannot be granted or valid, unless the interdiction was by a voluntary bond; for if it were judicial, or put on by the authority of a court, it cannot be removed, but by a process and decree of declarator, finding that the person is fit for managing his own affairs.

DISCHARGE and ASSIGNATION of a DEBT.

Know all men from me A. B. merchant in C. Whereas D. E. and F. G. Merchants in H. by their bond, dated
and registered in the sheriff court books of L. , bound
and obliged them, jointly and severally, and their heirs, to
pay to me, or my assignees, the sum of five hundred pounds,
lawful money; and this at whitsunday thereafter, with a fifth
part more of penalty in case of failure, and the legal interest of
the principal sum, from the date of the bond till payment. And
whereas I raised horning on the said bond, dated and signeted
, and charged both the said persons to make payment,
which they not having done, I brought a caption on the horn-
ing dated and signeted . As the said bond, horning and
caption more fully bear. And seeing the said D. E. hath made
payment to me of the foresaid principal sum, and the bygone in-
terest thereof, with the necessary expence of diligence, which I
have disbursed in order to recover payment, with which I am sa-
tisfied, therefore, I not only hereby exoner, and absolutely dis-
charge the said D. E. and his successors of the money now re-
ceived, and of the said bond and diligence for ever, and I war-
rant this discharge at all hands; but for the said D. E's relief,
and at his request, I cede and assign to him, and his succe-
sors,

fors, the foresaid principal sum, and the interest thereof with as much of the penalty as will pay the necessary expence already disbursed, or to be disbursed in operating payment Also the said bond itself, with the horning and caption thereon, and all that has followed or may follow upon the same. With power to him to do every thing for his own relief in the premises, which I might have done before granting this deed. And I bind myself and my successors, to warrant this assignation to the said D. E. and his above named, from my own fact and deed. And I have herewith delivered to him the extract of the said bond, with the horning and caption thereon, to be kept and used by him, as his own evidences in time to come. Registration, &c. in common form.

DISCHARGE of a BILL which is LOST, and a BOND for the same.

Know all men from me A. B. of C. whereas D. E. merchant in F. granted me his bill for one hundred pounds, lawful money, dated and payable . Which bill I lost with other writings in my pocket book, some days ago. And seeing the said D. E. hath paid me the said principal sum, and the interest thereof since it was due, with which I am satisfied, Therefore I exoner and discharge him, and his successors of the said one hundred pounds, and the interest thereof, and of the said bill itself, with all that has followed, or may follow thereon, now and for ever. And I bind myself and my successors, to warrant and maintain this discharge to the said D. E. and his successors at all hands, and in every event. I further bind and oblige myself and my foresaid, that the said bill shall never appear or be used against him or his successors, but that he and they shall be entirely free and safe from it; and if ever it be found, the same shall be delivered up to them, without any trouble or expence, and without any objection; under the penalty of twenty pounds, lawful money, to be paid by me or my foresaid to the said D. E. or his above named, over and beside performance. Registration, for preservation, and for horning on six days charge.

If a cautioner is to join in this deed, he should be properly mentioned at the beginning of the bond, in this manner. I as principal, and L. M. merchant in P. as cautioner for me, bind and oblige ourselves jointly and severally, and our successors, &c.

On MISSIVE LETTERS,

People have frequent occasion to make use of missive letters to one another, but they are of no validity in matters of importance, when either of the parties chuses to draw back; unless the subject be, 1st, a mercantile affair; or 2nd, the letters be written with the granter's own hand, or 3d, when a part of the price is paid at the granting of the letters, and thereby things are not entire. We may reckon it a matter of importance, when the subject exceeds £ 8. 6. 8.

There is no necessity for being nice in the form of letters on real business, we should come to the point, and use as few words as we can, in consistence with perspicuity, and the effect we intend. An example or two will suffice.

Mr A. B.

Edinburgh, June 23, 1786.

I hereby offer to sell you five hundred bolls of oatmeal, and five hundred bolls of barley, of this year's crop, and of the growth of my estate of L. and marketable quality. And this at the price which shall be current in this country at the first day of February next; and to deliver the whole to you or order, at the harbour of Leith, on demand in the two last weeks of January next, without any objection. The price to be fixed by any neutral man we shall name, if we do not agree ourselves. If you accept of this, please to signify so by a letter to me, and to pay me five pounds in part of the price which I will acknowledge in a proper receipt, I am,

S I R,

your most humble servant,

D. F.

To Mr A. B. merchant }
in Leith. }

Mr

Mr D. F.

Edinburgh, June 23, 1786.

I have your letter, offering to sell me five hundred bolls oatmeal, and five hundred bolls barley, of the growth and quality, and at the price and delivery, therein mentioned, and desiring my answer, with five pounds in part of the price, if I accept. Now, I do accept your offer, and become bound accordingly. And I am,

S I R,

your most humble servant,

A. B.

To D. F. of }
L. Esq; }

Edinburgh, June 23. 1686. Received, (on stamped paper) from Mr A. B. merchant in Lieth, five pounds sterling in part of the price of five hundred bolls oatmeal and five hundred bolls barley, for which we have made bargain by reciprocal missives of this date.

D. F.

In like manner, we may form missives upon any other subject of sale; noticing the address to the person, with whom we bargain, and the subject of it, with the circumstances, or terms of the bargain.

We should endeavour to have, on all subjects of business, such a method as is safe and secure from error; and also plain and easy. It should be distinct, without perplexing mixtures of things which ought to be kept separate. It should be full, so that nothing may be wanting, that is necessary or proper; but then, it should be short, without superfluity, or redundancy. And it ought to be proper to the subject in hand, and as much in the order of nature, in every thing, as may be.

We would likewise do well, to attend to the principal circumstances of an action, or thing, in the business we are about. They are not many in number, but are reduced to to these seven. Who, What, Where, With what assistances, Why, How, When. *Who*, denotes the quality, state, age, &c. of the person. *What*, the kind and sort, the greatness, smallness, multitude, fewness, &c. of the thing. *Where*, the place,

place. *With what assistances*, the instruments, means, &c. *Why*, on what account, with what view, *How*, the quality of the action, or the intention or remissness, designedness, casualty, secrecy, or openness. *When*, the time, as on the Sabbath day, a holy day, the hour of prayer, &c. And these circumstances should be considered in all our affairs, both civil and criminal.

ON LETTERS of ATTORNEY to ENGLAND, or the PLANTATIONS in AMERICA.

We sometimes have occasion to send powers, or letters of attorney to England, and America, to recover our claims, and it is necessary to do this in proper form, in order to make them valid, and have the effect we intend. When we send such to England, it is not in general use, to get the seal of the head borough of the county added to the appendages. Nor is it usual to write the affidavits on stamped paper, because we do not use such paper for those things. But when the letter of attorney is going out of Great Britain or to America, we commonly add the seal of the head borough of the county where the principal party resides, and we take the affidavits before the provost of that borough, who causes the seal to be affixed. And whether the letter of attorney be going to England, or elsewhere, the party makes oath upon his claim, or the debt owing him, and transmits the affidavit of this with the rest.

It is proper to know, that in any suit in any court of law or equity in the plantations, for any debt or account, wherein any person residing in Great Britain shall be a party, it shall be lawful for the plaintiff or defendant, and for any witness, to be examined, to prove any matter by affidavit, or solemn affirmation, before any mayor, or chief magistrate of the city, or town in Great Britain, where or near which the person shall reside, and certify it under the common seal of such city or town, or seal of the office of such mayor or chief magistrate; and every affidavit or affirmation so made and certified, shall be of the same force as if the persons had appeared,
and

and sworn, or affirmed *viva voce* in open court, or upon a commission. 5 Geo. II. 7.

The houses, lands, negroes, and other real estates situate within any of the said plantations belonging to any person indebted, shall be liable to all just debts and demands, and shall be assets, in like manner as real estates, by the law of England, are liable to the satisfaction of debts due by bond, and shall be subject to the like remedies with personal estates, in any court of law or equity in the plantations. 5 Geo. II. 7.

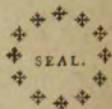
LETTER of ATTORNEY.

Know all men from me A. B. of C. merchant, that for divers good causes, and considerations me hereunto moveing, I have made and appointed, and by these presents, I do make, authorize and appoint D. E. of F. gentleman, my true and lawful attorney; for me, and in my name, and to my use to demand, sue for, recover and receive, of and from P. Q. of R. broker, and all others concerned, all such sum and sums of money, debts and duties whatsoever, which now are due and owing unto me by the said P. Q. or others, conformable to an account of the said P. Q. to me, signed and sworn to by me of this date, and herewith sent. And to have, use and take all lawful ways and means, in my name, and otherwise, for recovery of all and sundry the premises, by attachment, arrest, distress, or otherwise; and to agree and compound for the same, and acquittances, or other discharges for the same, for me and in my name, to make, seal, and deliver; and to do all other lawful acts and things whatsoever concerning the premises, as fully in every respect, as I myself might or could do, if I were personally present. Also attorneys, one or more under him, for the purposes aforesaid, to make, and at his pleasure to revoke. Hereby ratifying and allowing all and whatsoever my said attorney shall, in my name, lawfully do, or cause to be done in and about the premises, by virtue of these presents. In witness whereof, I, the said A. B. have hereunto set my hand and seal the tenth day of June, in the year of our Lord one thousand, seven hundred, and eighty six, and of the reign
of

of our sovereign George the third, by the grace of God, king of Great Britain, France and Ireland, the twenty fifth year.

Signed, Sealed, and delivered }
after being first duly stamp- }
ed, in the presence of }
R. S.
T. W.

A. B.



AFFIDAVIT of a WITNESS on this LETTER of ATTORNEY, when it is going only to England.

At S. the head borough of the county of S. in Scotland, the tenth day of June, one thousand, seven hundred, and eighty six. In presence of I. K. esquire, provost or mayor of the said borough, appeared R. S. of P. in the county of S. merchant, and being solemnly sworn in the usual manner of Scotland, and interrogated, maketh oath and faith, that he was present, and did see A. B. of C. merchant, sign, seal, and as his act and deed deliver, the deed poll hereunto annexed, bearing date this day, and purporting to be a letter of attorney from the said A. B. to D. E. of F. gentleman. And this deponent faith, that he did subscribe his name at the end of the said deed, as a witness to the execution thereof by the said A. B; and that I. W. the other witness, did also subscribe his name in this deponent's presence, as the other witness to the execution of the said deed. And this deponent faith, that the names A. B, R. S. and T. W. so subscribed to the said deed, are of the proper hand writing of the said A. B, R. S. and T. W. respectively. R. S.

Sworn at S. aforefaid before me

I. K. Provost.

AFFIDAVIT of the CREDITOR and GRANTEE of the LETTER of ATTORNEY on his account.

1775.
Nov. 11.

Mr P. Q. of R. Broker

Dr

To A. B.

To the amount of the sale of my stock in the East India Co. per your account two £. 250. To the interest thereof till payment.

A. B.

At S. the head borough of the county of S. in Scotland, the

the tenth day of June, one thousand, seven hundred, and eighty six. In presence of I. K. esq; provost or mayor of the said borough, appeared A. B. of C. merchant, and being solemnly sworn and interrogated, maketh oath and faith, that the account prefixed, amounting to two hundred and fifty pounds sterling of principal, and the lawful interest thereof, is a just and true debt owing by the said P. Q. of R. broker, to this deponent, and that is wholly resting to him and no part thereof paid. Also, that this deponent hath no other security for the same, but the said account in his books, and what letters of correspondence relate thereto, from said P. Q. to him. A. B.

Sworn before me

I. K. Provost.

AFFIDAVIT of a WITNESS to the FOREGOING ACCOUNT.

At I. head borough of the county of S. in Scotland, the tenth day of June, one thousand, seven hundred, and eighty six. In presence of I. K. esq; provost, or mayor of the said borough, appeared L. M. clerk, or book-keeper to A. B. of C. merchant, and being solemnly sworn and interrogated, he maketh oath, and faith, that the account hereunto annexed, signed and sworn to of this date by the said A. B. as due to him by P. Q. of R. broker, is a just and true debt, to the amount therein stated, as this deponent has the utmost reason to know and believe, and that there is no part thereof paid to the said A. B. nor has he any other security for the same, to the best of this deponent's knowledge and belief, but the said account in his books, and what letters of correspondence relate thereto, from the said P. Q. to the said A. B. L. M.

Sworn before me

I. K.

CERTIFICATE of the PROVOST or MAYOR on the FOREGOING AFFIDAVITS.

To all to whom this present shall come, I, I. K. esq; provost or mayor of the borough of S. do hereby certify, that on this day personally appeared before me R. S. of P, A. B. of C. merchant, and L. M. his clerk or book-keeper, the deponents named respectively in the three affidavits hereunto annex-

Y

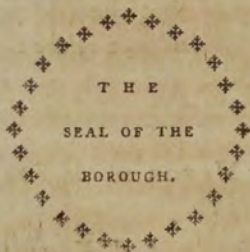
ed,

ed, all they being persons well known, and worthy of good credit, and by solemn oath which they severally took before me, did solemnly and sincerely declare, testify and depose to be true, the several matters and things mentioned in their said respective affidavits. In faith and testimony whereof, I have caused the letter of attorney mentioned in the affidavit of the said R. S. of P. to be here unto annexed, and I subscribe this at the place and on the date above mentioned,

I. K. Provost

But if the matter is going out of Britain, to America, the form of the certificate is as follows,

To all to whom this present shall come, I, I. K. esq; provost or mayor of the borough of S. in pursuance of an act of parliament made and passed in the fifth year of the reign of His late Majesty King George II. intituled, an act for the more easy recovery of debts in his majesty's plantations and colonies in America, do hereby certify, that on this day personally appeared before me R. S. of P, A. B. of C. merchant, and L. M. his clerk or book-keeper, the deponents named respectively in the three affidavits hereunto annexed, all they being persons well known, and worthy of good credit, and by solemn oath which they severally took before me, did solemnly and sincerely declare, testify and depose to be true, the several matters and things mentioned in their said respective affidavits.



In faith and testimony whereof, I the said provost or mayor, have caused the seal of the said borough of S. to be hereunto put and affixed, and the letter of attorney, mentioned and referred to in and by the affidavit of R. S. of P. to be hereunto also annexed, at the place and on the date above mentioned.

I. K. Provost.

APPENDIX.

A P P E N D I X.

On PERSONAL EXECUTION, or IMPRISONMENT for DEBT.

WHEN debtors in a royal borough do not pay, and they are under diligence from the magistrates, they may be imprisoned on the acts or precepts of warding, raised on the decrees of the court; but if a debtor shut himself up against the execution of the diligence, the creditor must represent this in a petition to the court, on which he gets a summary warrant to break open doors, and take the debtor. Or if a caption is out against the debtor, from the court of session, this contains a warrant to seize him by breaking open doors at once, and taking him. In either of these cases, the debtor is put into prison to compel payment. But if he be not able to pay, he either applies for the benefit of the act of grace, as it is called; or he brings an action before the court of session, called, an action of *cessio bonorum* (for we must speak Latin), or a surrender of effects. The act of grace is directed against the creditor who imprisons, or those who arrest the debtor in prison only, for the sake of the borough, as well as the debtor. The *cessio bonorum*, is directed against all the creditors who are called into the process, and has the effect to procure the debtor's personal liberty against all the debts preceding the process. Which is by far the best of the two ways for the debtor.

On the ACT of GRACE.

When the debtor intends to take the benefit of the act of grace, he gives in a short petition to the magistrates, stating his case, and craving the benefit of the act in this manner,

Unto the magistrates of D.

The petition of A. B. weaver in D.

Humbly sheweth,

That he is imprisoned in the tolbooth of D. at the instance of E. F. merchant in G. on your honours precept of warding for non-payment of five pounds, and a fifth part more of expences.

That the petitioner is become so poor as he cannot aliment himself in prison, and he is willing to make oath on it.

May it therefore please your honours to grant him the benefit of the act of parliament in the year 1696, c. 32, against the alimentering of poor prisoners. And your petitioner shall ever pray.

A. B.

D. June 20, 1786.

D. June 20, 1786. In presence
of Bailie L. M.

The petitioner A. B. being solemnly sworn, and interrogated, depones that he has not wherewith to aliment himself in prison, and this is truth as he shall answer to God.

A. B.

L. M.

The bailie having considered the foregoing petition and deposition, modifies to the petitioner an aliment of sixpence sterling each day, to be paid him by the incarcerating creditor, and appoints intimation of this, to be made to him, with requisition to provide and give security for the said aliment to the prisoner, or consent to his liberation, within ten days thereafter, otherwise he will be set at liberty, in terms of the statute mentioned in his petition.

L. M.

The clerk's dues of this being paid, he sometimes gives the prisoner the principal warrant, and sometimes an extract of it. But which ever of the two it is, the prisoner causes an intimation of the matter to be made to the creditor, either by a public notary, or by any other person, who reads over the same to the creditor personally, or at his dwelling house, and leaves a copy of it, before two witnesses. And of this the person signs a certificate along with the witnesses, and returns the warrant and certificate. If the creditor do not lodge the aliment
within

within ten days after the intimation, the jailor signs a certificate that it is not lodged, and thereon the bailies grant warrant for setting the prisoner at liberty immediately.

The law does not require the prisoner to intimate this matter, first or last, to his other creditors, nor to grant any disposition of his effects to the incarcerator, or the rest, and it is not the business of the royal borough to make the matter harder against such prisoners, than the law has made it.

If another creditor afterward arrest the poor prisoner, he must also either pay the aliment, without any new intimation to him, or the prisoner will be set at liberty. But a question occurs concerning the payment of the aliment in such cases. Common practice makes it not to begin, or be payable till the lapse of ten days after the intimation to the creditor, which is not the obvious, or exclusive sense of the statute, and it is giving the interpretation in a hard manner, against poor prisoners. The aliment however appears to be due and begin on the day in which it is modified, and to be running on all the ten or more days from that time. So that when the ten days are expired, the creditor ought to lodge the whole aliment, for every day, from the time it was fixed; otherwise, the prisoner should be set at liberty. The ten days seem to be allowed only for the creditor's deliberation, whether he is to maintain the prisoner or not, and not to begin the aliment itself but only the payment of it, at the end of them.

After a prisoner is set at liberty on this act of grace, he may be again committed on the same diligence, and for the same debt; but the creditor must instantly lodge the former appointed aliment.

The benefit of this act is not given to prisoners for criminal causes; they must remain till they be liberated in due course of law. Here is a copy of the act.

ACT ANENT *the ALIMENT of POOR PRISONERS in the year 1696, called, the ACT of GRACE.*

Our sovereign Lord considering, that generally the Burghs of this kingdom, havers of prisoners, are troubled and overcharged

charged with prisoners thrust into their prisons, who have nothing to maintain themselves, but must of necessity either starve or be a burden upon the burgh; doth therefore, and for remeid thereof, with advice and consent of the estates of parliament, statute and ordain, that where any person is made, or shall be made prisoner for a civil debt or cause, and shall be found or become so poor, as that he cannot aliment himself; then and in that case, it shall be leifume to the magistrates of the burgh where the prison is, to which the said prisoner is committed, upon the complaint of the said prisoner, and his making faith in their presence, that he hath not wherewith to aliment himself, to intimate the same to the creditors, one or more, at whose instance the said prisoner was committed, or is detained; and to require him or them, either to provide and give security for an aliment to him, not under three shillings *per diem*, or else to consent to his liberation: Which if the said creditors refuse, or delay to do, within the space of ten days thereafter, then it shall be leifume to the said magistrates, to set the said poor indigent prisoner at liberty, without any hazard of being liable for the debt and cause of the imprisonment, or to any other censure whatsoever, providing always, that if any other creditor, at whose instance he is made or detained prisoner, give security to aliment the said indigent debtor, he shall be kept prisoner as before; as also, that prisoners for criminal causes be in the same state as formerly.

On a CESSIO BONORUM, or a SURRENDER of EFFECTS.

Prisoners for civil debts as is before mentioned, may secure their personal liberty by an action at law, called a *cessio bonorum*, or a surrender of their effects to all their creditors, before the court of session. The pursuer must be actually in prison, before he can insist for the benefit of this. All his creditors must be called, and he must set forth in his libel the justifiable occasion by which he became insolvent, and prove the same. He concludes for liberty to his person, in respect of the disposition or surrender which he makes of all his estate, to his creditors. The disposition must be particular, or relative to

an inventory of the estate, and he must depose, that he has no other estate, and has made no other conveyance. If the court is satisfied as to the circumstances of his bankruptcy, they declare him intitled to personal liberty; which has effect as to all his creditors that are called, and their debts at the time. It is thought, that his wearing cloaths, and bedding for himself and his family, and the utensils of his trade, ought to be left out of the disposition by the debtor.

The benefit of this process is competent, even against creditors to whom the debtors had sworn to make payment, and to whom they had renounced the benefit. But it does not extend to debtors for criminal matters, nor to fraudulent bankrupts. These last are declared infamous, and liable to banishment, or other arbitrary punishment; and they are obliged to wear the dyvours habit in public, which is an upper coat of several colours.

The form of the disposition to the creditors, which is granted in this process, may be easily known from the form of a disposition of moveables to a single person, already given; only, the inventory of the effects must now be on stamped paper. But the agent in the process generally manages this with the rest of the affair.

On SUSPENSIONS and REDUCTIONS.

If a debtor has any thing to say against the debt or subject itself, and the decree thereon, before the decree has received full execution by payment, or performance, he applies to the court of session by petition for a suspension of the sentence, and he obtains an order for staying execution till the cause be again considered. If the debtor be in prison, he at the same time applies for liberation, but he must intimate to the creditor before hand, that he is to apply for liberty along with the suspension.

The suspender, or debtor, must in general find caution to pay the debt and expenses, if he shall be decreed to do so; but if he cannot procure unquestionable security, the court admit juratory caution, or such as he swears, is the best he can offer.

But

But the reasons of suspension are in this case to be considered with particular care, at passing the bill or petition.

But if the decree be paid, or the fact performed, there is no relief to be had, but a by process of reduction before the court of session, in order to make void the decree, and restore the party to his right, with damages and expences.

On PROTECTION from PRISON for CIVIL DEBT.

The palace of Holy-rood-house, or Abbey at Edinburgh, is a sanctuary for sheltering debtors against captions for civil debts, so that if they go within the precincts or bounds of that palace, and get themselves entered into the bailie's book, they have the privilege of protection to their persons till they can get the affair settled. They may not come without the bounds of this sanctuary without hazard, unless it be on Sabbath days, when diligence cannot be executed. Fraudulent bankrupts are not allowed this protection, nor those who are decreed to perform facts which they have in their own power, and yet refuse to do; nor those who contract debt in the sanctuary. For this last, there is a prison within the bounds, to which they are committed in course of law.

And if one, who has retired to the sanctuary, is needed to be a witness, he gets a protection from the court of session for as long time as is necessary to come out, to this purpose.

There is no sanctuary, nor protection against crimes, in Scotland.

REAL EXECUTION for DEBT, by POINDING the DEBTORS MOVEABLES.

Warrant for poinding is contained in hornings from the court of session, and in the precepts of poinding, granted by inferior judges, and the poinding proceeds after the days of a charge to make payment, are elapsed. Poinding is a kind of judicial procedure, where the messenger, or officer, is judge. It must be gone about, while the sun is up; at least it must be so begun, and be finished before day light is away. He must cause appraise the goods on the ground where they are found

found, by two sworn appraisers, and thereafter carry them safely to the market cross, of the next burgh royal, or regality or Barony, and there appraise them again by other two sworn appraisers. If the goods be not proper to be taken thither, parcels or samples of the same may be taken. The last appraising is the rule which the messenger is to follow. After the last appraising, the messenger must offer the goods to any that will take them at the price; and if none bid for them, he adjudges the same according to their value, to the creditor, in whole or in part of the debt. The execution of this is extended, and signed by the messenger and witnesses; and a copy of it signed by the messenger, ought to be left for the debtor at his house, within forty eight hours, which is all he has for a discharge.

The poinding proceeds for the messengers fee likewise, called his sheriff-fee, which is the twentieth part of the debt. He ought not to appraise or adjudge any particular thing over payment of the debt, on pain of a spuilie; but if he take an indivisible thing, as a horse, whose value exceeds the debt, and sheriff-fee, the overplus must be returned, or consigned in some responsible persons hands, and this must also be expressed in the execution of poinding.

Only the debtor's own goods can be poinded, and therefore, if any person offer to depose the goods are his, the messenger must not poind them, but take the oath and desist. If he refuse to take the oath, and desist from the claimed goods, he is liable in a spuilie, as he likewise is, if he poind plough goods, in the time of labour, when other goods are on the ground.

If any person stop a poinding, by claiming the goods, and making oath; or by producing a disposition of them, from the debtor, which are afterwards found to be fraudulent; where the goods are appraised before the stop is made, the obstructor will be subjected to the value of the goods; but otherwise to the whole debt, as in the case of deforcement, it being alike to the creditor, whether the execution is impeded by force or fraud.

Heritors may, on their own baron decrees, poind their tenants goods for their rents, by their own officers and without

a charge; and by appraising the goods at the place accustomed, without carrying them to the market cross. Ministers, also, and universities, schools, and hospitals, may poind for their rents and stipends, by appraising the goods upon the ground only.

If the goods are within close doors, and the messenger cannot get access, if he return an execution of this, a new warrant will be granted for making open doors; on which he may break the doors, and poind the goods. If he get entrance, he may break open chests, cabinets, or chambers, in order to the poinding. But goods on board of a ship cannot be poinded; they can only be arrested, as the ship itself may, and be brought to sale before the admiral court.

The messenger or officer should not offer the goods back to the debtor, at the appraised value, as is commonly done; the offer should be, to have the goods upon his relieving them by payment of the debt. For if he should take the goods at the appraised value, and the debt not be thereby satisfied, the messenger might presently poind them again, for what is owing.

The plain and legal procedure in a poinding is this. The messenger or officer goes to the ground where the debtors goods are, having his horning, or precept of poinding, with an execution of a charge to pay, and the days expired. He is attended by two witnesses, and two appraisers. He makes open proclamation for people to attend to what he is about, and then he reads the warrant and the execution aloud. He demands payment from the debtor, and failing this, he lays hold of the goods. He administers an oath to the two appraisers, that they shall act faithfully in valuing the goods. After the valuation of as much as will pay the debt, or as much as the messenger thinks proper to take at the time, he declares the values, he offers the goods to the debtor if he will pay the debt, and no person making an offer, he adjudges the goods to belong to the creditor at the appraised value, and delivers them over to him or any person for him in full; or in part of the debt, and the sheriff-fee. Then he leaves a written note of the poinding and appraised values of the goods, subscribed by him,

him, upon the ground, for the debtor. After which, he carries the goods safely to the market cross, before his witnesses, where he again makes proclamation, reads his warrant, demands payment of the debt, and then takes other two appraisers, to whom he serves the same oath as before. They proceed in the valuation, the messenger declares the values, and offers the goods to the debtor if he will pay the debt; and failing his acceptance, he adjudges them, at the appraised value, to the creditor, in full, or in part of the debt, as the case is, and of the sheriff-fee which is the 20th part of the debt; and he delivers them to the creditor, if he is present, or to any person for him. Then the messenger leaves a distinct written note of the matter, signed by him, at the cross, for the debtor, and all concerned.

The pointing of corns in stacks, is carried on by rips, or parcels; and of corns in granaries, or sacks, by a parcel also. Thereafter, the messenger chuses a caster, thresher, and meter of the corns, administers an oath to him or them, and thereby ascertains the amount. All which is expressed in his execution. Or if the goods be brass, copper, or other things, to be weighed, they are pointed by symbols, and valued conformable to the weight. Horses, or other bestial, must not be rode, wrought, or over-driven, between the pointing on the ground, and at the cross, for they may be made worse, and the value diminished. The halters, bridles, and the like, should be carefully appraised.

EXECUTION *of* LOCK-FAST DOORS.

Upon the nineteenth day of June one thousand seven hundred and eighty six, I, A. B. messenger in C. by virtue of letters of horning, containing a warrant to point, dated and signeted the twenty fifth day of May last, and execution of charge, dated the twenty ninth day of May last, at the instance of D. E. merchant in F. against G. H. merchant in I. passed with appraisers and witnesses, and a procurator for said D. E. to the dwelling house and cellars possessed by the said G. H. in order to have lawfully pointed the effects therein, belonging to the

said G. H. for payment of one hundred pounds sterling of principal, with the interest and expence specified in the said horning. But I could not proceed in the pointing, by reason of steeled and lock fast doors. This I did, conformable to the said horning in all points, before these witnesses.

EXECUTION of POINTING.

Upon the twenty-first day of June one thousand seven hundred and eighty six, I, A. B. messenger in C. by virtue of letters of horning, containing a warrant to point, dated and signetted the twenty fifth day of May last, and execution of charge dated the twenty ninth day of May last, at the instance of D. E. merchant in F. against G. H. merchant in I. passed to the ground of the houses and cellars in I. belonging to the said G. H. with the witnesses subscribing, where, after crying three oyeses, open proclamation, and public reading of said horning and the execution, which charges the said G. H. to pay to the said D. E. one hundred pounds sterling money, with the interest thereof since candlemas last till payment, and five pounds of expences, I demanded payment of the said debt; but this not being complied with, I by virtue of the said diligence, and in His Majesty's name and authority, did apprehend and point the goods and gear after specified belonging to the said D. E. And after exposing the said effects to public view, I appointed L. M. and N. O. both residents in P. and skilled persons, to be appraisers, for valuing the same; to whom I administered the oath of faithful discharge of duty. And they took particular inspection of all and sundry the said effects. After which they estimated and appraised the same to the prices following viz. (Here the effects are particularly set down, in distinct order, with the price of each article distinctly.) Which prices I openly declared, and I offered back the effects three times to the said I. K. if he would pay the debt; which not being accepted, I adjudged the said effects to belong to the said D. E. at the appraised values, in payment of the said debt and my sheriff-fee thereon; and I delivered the said effects to the said D. E. personally. I also subscribed and left upon the ground,

where

where the said effects were poulded, an exact note of them, and the prices, and of the poulding. And immediately thereafter, I caused carry safely all the said goods and effects to the market cross of I. before the said witnesses, where, after crying three oyes, making open proclamation, and public reading of the said horning and execution, and exposing the said effects to public view, I appointed R. S. and T. W. both residents in I and skilled persons, to be appraisers, for valuing the said effects; to whom I ministered the oath of faithful discharge of duty. And they took particular inspection of all and sundry those effects. After which, they estimated and appraised the the said effects, to the values and prices respectively above specified, excepting only the articles following, which they appraised at the prices now annexed to them, (here the exceptions are to be distinctly set down, in the order first mentioned.) And again, I declared openly the prices to which the said effects and goods were estimated and appraised. I also made offer of them to the said G. H. three times, if he, or any person for him, would pay the said debt. And in regard none appeared to this effect, or to claim the property of the said effects, I by virtue of the said horning, and execution of charge, and of my office, adjudged and declared the same to belong to the said D. E. and I delivered them to him, in payment and satisfaction of the foresaid principal sum and interest thereof, and the expences, amounting in all to the sum of one hundred and six pounds eighteen shillings six pence sterling, and in payment of my sheriff-fee corresponding therewith, which, for satisfaction now received, I assign and dispoise to the said D. E. for ever. I also subscribed and left at the cross a written note of this matter and of the said effects and prices for the said G. H. and all others concerned. All this I did conformable to the said diligence and daily practice, before W. Y. and N. both residents in S. witnesses required to the premises, and who subscribe this execution with me.

If the poulding is of corns, either growing, or in stacks, or granaries; or of hay, or copper, brass and pewter vessels, or the like, the Messenger or officer must do more than is specified

fied in the above execution, therefore he adds before the words, *all this I did.*

And thereafter, upon the twenty second day of the said month of June, I went back to the corn yard of the said G. H. in order to cast, thresh and mete the said stack of wheat and fodder, and the stack of oats and fodder, and to mete the barley in the granary, also to weigh the said stack of hay. And there I appointed I. K. in L. to be the caster, thresher, dichter and measurer of the said corns, and the weigher of the said hay, to whom I ministered the oath of faithful discharge of duty. He accordingly did cast the said corns to the proof, threshed, dighted, and measured them, and reported the amount of them to be, (here set down the particulars distinctly.) He also weighed the said hay, and reported the same to be two hundred stone weight. Likewise, on the same day, I went back to the said G. H's. dwelling house, and caused carry the said copper caldron, bras pans, pewter plates, trenchers, and iron grate above mentioned, to the weigh-house of P. where the same were weighed by the keeper of the weigh-house, and they amounted as follows, (here take in the particulars distinctly.) And at doing all this, the said G. A. or others for him had full liberty to attend, and see every thing that was done.

The POINDING of BESTIAL in one's SKAITH.

Where horses, cattle, sheep, or other Bestial are found destroying the corns, grafs, or planting in anothers grounds, the possessor may seize and keep them, till half a mark for each, and the expence of keeping them, be paid by the owner; beside the damages for which they may be also detained, or part of them, especially if the same be presently estimated. The party ought to put the cattle in a pound, or poind fold, or some safe-place, and forthwith acquaint the owner, that he may relieve them. He ought also to give them fodder and water, and not use them, or work them.

On ACTIONS of SPUILIE.

Spuille has been mentioned, in giving an account of poinding;
ing;

ing; it is therefore proper to notice what this spuilie is, and the consequences of it. Spuilie or spoliation is, the violent seizing, or unlawful taking possession of goods from another, without his consent, or the order of law, for the sake of gain. It comprehends both theft and robbery. It occurs by seizing the goods, and also by excluding the owner from the possession of them. Peaceable possession is a sufficient title to pursue the spoliators of the effects, jointly and severally. The special incidents, or peculiarities, in an action of spuilie, are the pursuers oath on the value of the things, according to his price of affection, or what they were worth to him; and violent profits; which are beyond the ordinary profits, and are such as might have been made of the goods, by the utmost industry. The offender is also liable in full expence of plea. The spuilied goods must be first of all restored to the possessor, or the real value of them, and then the consequences are judged of. An action of spuilie prescribes in three years after the fact is committed, as to its privileges; but still it may proceed for simple restitution, or the ordinary value.

On ARRESTMENTS and FORTHCOMINGS.

A creditor may affect his debtors money, and other moveables by arrestment, in order to procure payment of his debt. An arrestment, is the order of a judge, prohibiting him who is debtor to the arresters debtor, from payment or delivery, till the arresters claim be paid or secured. The arresters debtor is called, the common debtor, and he in whose hands the arrestment is used, is named, the arrestee.

The order or warrant of arrestment proceeds either on a bill, and other voucher of debt, and on a depending action, after a summons is given; or on a decree. It may be used in the hands of a debtor to the common debtor, in the hands of a tutor for a pupil, in the hands of a deacon and boxmaster of a corporation, or in the hands of the directors and cashier of a bank.

All personal debts or obligations may be arrested, even heritable bonds before seisin has been taken on them; and tho' the

the term of payment be not come, if the debtor be declining in his circumstances. But bills are not arrestable before, or within six months after they become due, because they pass as ready money till the expiration of that period. Future rents are not arrestable, only those that are due or current. Alimentary debts are not arrestable, such as the salaries of offices granted by the king, servants fees, &c.

If the arrestee pay the money, or deliver the goods, notwithstanding the arrestment, he is liable to a criminal prosecution, and to pay the debt again to the arrester. Arrestments do not fall by the death of either of the parties.

If they be not laid on in virtue of a decree, they may be loosed by the common debtor giving security for the debt, in case it be found due; but if they proceed upon decrees, they cannot in general be loosed, but by payment or consignation of the money.

An example of a bond for loosing an arrestment is already given.

If the common debtor do not consent that the arrester have the subject arrested, the latter may bring an action at law, called, a process of forthcoming against the arrestee and the common debtor for his interest, before the sheriff, magistrates of royal boroughs, or the court of session, whereby he will get payment of the money arrested, or the goods sold; and the price delivered to him.

Arrestments are preferred according to their dates, not only by days, but by hours. And it is proper to have the hours mentioned in the execution of arrestments, where there is any appearance of a competition. An assignation duly intimated is preferred before an arrestment which is laid on after the intimation. And arrestments, and intimations with arrestments, of equal dates are ranked altogether, and come in alike.

Of JUDGES.

The king is the fountain of jurisdiction, and he appoints all the judges of the kingdom. Beside the supreme court of the british house of peers, for determining all appeals in civil causes,

es, and the court of session for civil matters, the court of justiciary for criminal affairs, and the exchequer for the kings revenue; beside all these, the people have before them, the sheriffs of each county, the justices of the peace, the magistrates of royal boroughs.

The *sheriff* judges in all contracts, and personal obligations to the greatest extent; in forthcomings, poindings of the ground, mails and duties, and in all possessory actions, as removings, ejections, spuilies, &c. in all briefes from the chancery, as the brief of inquest, terce, division, tutory, &c. and in adjudications of land estates, on the renunciation of the apparent heir. He also judges of theft, and murder, and is competent to most questions of public police. He has a cumulative jurisdiction with the justices of the peace, in all riots and breaches of the peace. Sheriffs have the executing of the writs for electing members of parliament, and the writs from the court of exchequer. They take care of all estates, duties or casualties, which fall to the crown within their territory, and they account to the exchequer for them.

Justices of the Peace, are magistrates named by the sovereign over the several counties of the kingdom, for preserving the public peace. They judge in breaches of the peace, and in most of the laws concerning public policy. They may compel workmen, or labourers to serve for a reasonable fee, and masters to pay their servants wages, which is the only point of civil jurisdiction given them. They judge in question of highways, and call out the people to perform their yearly work to the roads. They, with the commissioners of supply, assess the the shire in the sums necessary for upholding the roads, building bridges, &c.

Since the union of Scotland with England in the year 1707, the justices of the peace are authorized to exercise whatever belonged to the office of an English justice of the peace, in relation to the public peace. From that time, the Scots and English commissions have run in the same style, and they contain powers to enquire into, and judge in all capital crimes, with crafts, felonies, &c. of which justices of the peace may law-

fully enquire. But in cases of difficulty, they shall not proceed unless one of the king's judges, or of the lords of justiciary be present. Two justices now constitute a court, and in matters of excise their sentences are final, though in other cases, they are subject to appeal and review.

Magistrates of royal boroughs, are those office bearers who are chosen yearly by the councils or representatives of the burghs. They have jurisdiction in matters of debt, services and questions of possession between the inhabitants. The provosts, or chief magistrates of several royal boroughs are also sheriffs, and have the same jurisdiction within their boroughs, as the sheriff has within the county. The common criminal jurisdiction of royal boroughs, extends to petty riots, and to reckless, or not intended fire raising. Their ordinary form of procedure, is much the same as before the sheriff court of the county, only it is sometimes more summary, which is owing to their smaller territory, and the easier attendance of the people there.

Before those judges, especially before the sheriffs of counties, and the magistrates of boroughs, are brought actions at law, or processes of several sorts, of which we may take a general view, as to the manner of proceeding in them.

Of ACTIONS at LAW.

An action at law, is a regular demand of a creditor against a debtor, before a judge, for obtaining a right. It has several divisions and denominations, according to the different natures of the rights pursued for; but in general it is divided into real and personal. The first arises from a right in the thing itself, and is directed against all possessors of that thing, whether it be a moveable subject, or heritable. A personal action is founded on an obligation, verbal or written, to perform a fact, or deliver a thing; and it is directed against the person obliged, or his heirs.

All actions at law, are begun with an original writ or summons, which is issued from the court, before which the action is to proceed. This writ is served at the instance of the pursuer

fuer or creditor, against the defendant or debtor, according to the established form of proceeding before that court. The summons ought to contain the matter to be tried, in a plain, expressive, and certain manner.

The defendant is allowed a certain time for making appearance, and on the day or diet of his appearance, he should be ready with all his exceptions or defences against the libel, or charge. It is of great use in getting dispatch, to be as full with information and proof, at the first, as is possible, or really necessary. The exceptions which are made by the defendant to the pursuer's libel are comprehended in the following particulars, and pleaded in this order. 1st, Exceptions to the competency of the jurisdiction of the court; that it has not legal authority to try the cause. 2d, Exceptions to the judge; that he is too near a relation to either of the parties, or has an interest in the issue of the suit, and therefore he is not competent. These two exceptions, are properly called, declinatory defences. 3d, Exceptions to the form of citation, or the execution of the summons; that the defendant was not summoned, as the general law, or the particular form of the court, directs; and the execution or certificate of this, shows that the citation was irregular, and therefore it is null. 4th, Exceptions to the pursuer's title; that he does not connect and show a proper title to carry on the action. 5th, Exceptions to the form and competency of the action itself; that it is not brought in legal form, and that it is not competent on such a subject. 6th, Exceptions to the proceeding in the action, because all parties having interest are not called. 7th, Exceptions personal to the defendant; that he does not represent the person who was the original debtor to the pursuer.

The last five exceptions, are called dilatory defences, and they all, and others of this sort, should be tried and discussed, before proceeding to the peremptory exceptions; because, if the defendant in the first place plead his peremptory defences, he will be holden as having passed from his dilatory defences.

A defence is called peremptory, when it is such as the decision thereof shall put an end to the cause.

The pursuer makes answer to the defendant's exceptions, and endeavours to refute them and set them aside. And if the judge find it necessary, he ordains the defendant to make a reply, and the pursuer a duply, &c. But it is far better, that the parties be explicit, honest, and ready at the first, for their own sakes, and thereby prevent those many writings.

When the judge is satisfied concerning the state of the fact, he pronounces an interlocutory order, finding such, and such facts relevant, and admitting the same to be proved as the law directs, and assigning a day for that purpose. Sometimes the parties, before they go to other proof, require each other to be judicially examined on the facts alledged, in order to know how much they acknowledge, and how much they deny; and that if the proof afterward turn out to be contrary to their denial, they may be in the greater condemnation. And sometimes the parties are appointed to condescend or specify their mean of proof, before a proof is allowed.

Here it may be noticed, that a thing or fact can be proved only by the writing, or oath of party, or by witnesses and sometimes by presumptions. But witnesses are not admitted to prove payments of money above £ 8. 6s. 8d. Nor to prove a gratuitous promise, even for the smallest trifle. They are also rejected in all contracts where writing is essential to their constitution, as bargains concerning heritable subjects; legacies above £ 8. 6s. 8d. and the like; or where writing is usually adhibited, as in the borrowing of money. Witnesses are not allowed to take away a debt or right once constituted by writing.

No person, whose near relation to another bars him from being a judge in his cause, as a father, brother, son, uncle, or nephew, can be a legal witness for him; but he may, against him. Excepting a wife against her husband, or a child against his parent. Domestic servants are rejected, and infamous persons, or those who have been guilty of crimes which law declares to infer infamy; or those who have been declared infamous by the sentence of a judge. Pupils are not ad-

mitted

mitted as habile witnesses, nor women where other witnesses can be had.

Witnesses, where there is a penury or want of proof, are sometimes received *cum nota*; that is, their testimony, though not quite free from suspicion, is to be joined with the other evidence, and to have such weight given it, as the judge shall think it deserves.

Before witnesses are examined, they are sworn, and purged of partial counsel; they must declare, that they have no interest in the cause, nor have given advice how to conduct it; That they have got neither bribe nor promise, nor have been instructed how to depose; and that they bear no enmity to either of the parties.

Then the deposition is taken down in a clear and distinct manner concerning the subject in question, with the principal circumstances of time, place, person, &c. and the cause of the witnesses knowledge. And it is concluded with words to this purpose. And what he hath deposed is truth as he shall answer to God. The witnesses sign their depositions, or swear they cannot write, and the judge signs in both cases.

In examining witnesses, the questions ought not to be put so as to lead the witness to give an answer, in this manner; Did you not see or hear such a thing? It ought to be put this way. Did you see or hear such a thing, or not? And it would often prevent a great deal of trouble at the examinations, to cause the parties or their agents give in the principal questions in writing before hand, and not to wrangle, and load the proof with useless matter at the examinations.

If the witnesses who are summoned, do not appear at the diet, a warrant is granted for apprehending them, and bringing them before the court. But if either of the parties bring no proof within the term allowed them, an order of court is given, circumducing the term, or circumscribing him to that time, and precluding him from bringing evidence thereafter. And when all the evidence is brought, the court declares the proof concluded, and the cause is advised.

But if the proof is long and intricate, which does not often happen

happen before inferior courts, the court orders the parties to give in memorials of the case, stating the facts, as they apprehend the same to be proved. And which states may be in this form. 1st, The facts admitted by all parties. 2d, Facts alleged by the pursuer and proved by him, though denied by the defendant. 3d, Facts alleged by the defendant and proved, though denied by the pursuer. 4th, The law as applicable to the facts. The writings founded on by either party are quoted by their titles and the particular pages and clauses; and the depositions, by the names of the witnesses, and the numbers and clauses. After which, the judge advises or considers the cause, and gives sentence.

Where facts do not admit a direct proof, *presumptions* are received as evidence, and they are often very convincing. They are reasonable consequences, drawn from facts already known or proved, to infer the certainty, or probability of another fact to be proved. Presumptions are either, *of and by law*; where statute or custom establishes the truth of any point upon a presumption. It is so strong and general, that it rejects all proof which may be brought to elide it in special cases. The testimony of a witness who forwardly offers himself without being cited, is rejected from a presumption of his partiality. And a minor is disabled from acting without consent of his curators, because the law presumes him incapable, &c.

Presumptions of law, are established by law books, and decisions, without founding any particular consequence upon them. They take place on the want of a contrary proof, and they may be destroyed by direct evidence, and by other conjectures which afford a stronger degree of probability to the contrary.

Presumptions of man or a judge, are those which arise from the circumstances of the fact, without any express law to direct the judge, who will distinguish between presumptions which are rash, probable, violent and necessary.

A fiction of law, differs from a presumption, as things are presumed, which are likely to be true; but a fiction of law assumes for truth what is either false, or as probably false as true. An heir is feigned in law as the same person with his ancestor

ancestor. Sometimes an infant in the womb is esteemed to be born, and when a man acts by another, he is supposed to act himself. Fictions of law do not change the nature of things, but the effect of things may be changed and applied as the law thinks reasonable, and fictions must be limited to the special purposes of equity for which they were introduced.

The form of process in causes civil and criminal observed in general, in the Sheriff and Stewart courts in Scotland.

In CIVIL CAUSES.

I. That no person shall be obliged to appear before the sheriff court, unless he be cited upon a proper summons, signed by the clerk and fully libelled.

II. That the officer who executes the summons shall deliver to the defender, if he find him personally; or, if he find him not, shall leave at his dwelling-house a full copy of the libel to the will: That, if there be more defenders than one, each shall be served with a copy of such part of the libel as concerns him; and, in poindings of the ground, the tenants shall be served with short copies, and the proprietor with a full one; the officer's execution always certifying the delivery of such copies respectively.

III. That the two preceding articles shall not extend to actions for any liquid sum, under thirty shillings sterling, but that in all such actions, the form of summoning defenders shall continue, and take place as formerly, subject to such variations as may be made by the sheriffs, within their respective jurisdictions.

IV. That all summonses shall contain only one diet of compareance, and that six free days shall intervene, between the day of citation, and the day of compareance, exclusive of both those days; and that the day of compareance shall always be an ordinary court day.

V. That every officer who returns an execution bearing the
defender

defender to have been cited to a different day, from that specified in the copy left with the defender, shall be subject to the parties damages and otherwise punished as the law directs.

VI. That upon the day of compearance, and in all the after-procedure, the parties may either appear personally or by a procurator of court; such procurator when appearing for the defender, having, in all cases a written mandate, or being judicially authorized by the defender.

VII. That upon the day of compearance, or any after court day, during the currency of the summons, and before Litis-contestation, the defender may crave protestation against the pursuer for not insisting; and, upon producing the copy of citation, and the pursuers failing to appear and insist, the sheriff shall admit the said protestation; and the protestation money shall be modified by the sheriff, according to circumstances, so as to indemnify the defender for his trouble and expences, besides the expence of extracting the protestation.

VIII. That the above mentioned protestation shall not be extracted, till after the expiry of six free days, after the day of pronouncing thereof; and, being extracted, the defender may recover the sums therein contained, by all manner of legal diligence.

IX. That if the protestation be not extracted, the pursuer shall be allowed to call and insist in his action, without the necessity of a new citation, upon paying over to the defender or his procurator, or, in their absence, consigning it in the clerk's hands, for the defender's use, the sum awarded by the protestation, without the expence of the extract.

X. That in case the protestation be extracted, the pursuer shall fall from that instance, and the defender shall not be obliged to answer, but upon a new summons and citation, upon the ordinary induciæ.

XI. That if the defender be absent, and it appear that the citation was personal, the sheriff shall either hold the defender as confess, or allow such other proof as the pursuer or his procurator shall desire; but, if the citation be not personal, the
sheriff

sheriff shall in that case, either decern in absence, or, if demanded, admit the libel to the pursuer's probation.

XII. That if at calling of the cause, the defender or his procurator demand to see the process, in order to make his defences, the sheriff shall allow the same till the next court day, or may ordain him to see the process, and give in his defences to the clerk of court, against a shorter time as he shall see cause.

XIII. That, against the day appointed, the defender shall give in, in writing all his defences, both *dilator* and *peremptor*, which the sheriff shall either advise in court, or allow the pursuer to see and answer, against such a day as he shall appoint; and, when answers are given in, the sheriff may either advise the debate as it then stands, or allow the defender a reasonable time to reply; and, after giving in the reply, the debate shall be understood to be concluded, and the sheriff shall proceed to advise the same, unless he think proper to direct further debate, or to appoint informations to be given in.

XIV. That, after defences have been given in, as above, no new defence, unless recently come to knowledge, shall be received, without payment of an amand of one shilling sterling, to be disposed of to the other party, or put to such other use as the sheriff shall think fit.

XV. That upon the day assigned for giving in defences, answers, replies, or informations, the process shall be returned to the clerk, by the person who received it, under an amand of one shilling sterling, to be disposed of, as above.

XVI. That improbation against the execution of process, or against any writ, founded upon by either party, shall not be received, unless proposed by the party who makes the challenge personally, or by his procurators specially authorised for that purpose, or by a written mandate, and upon consignation of twenty shillings sterling, to be forfeited to the other party, in case the proposer shall afterwards pass from, or fail in his improbation, besides what cost and damage shall be awarded against him, at the conclusion of the cause, and other legal consequences of failing in the improbation.

XVII. That if at any time an oath of calumny be insisted for, when the person of whom it is demanded, is not present, the same shall not be admitted, except upon consignation of two shillings and sixpence sterling, to be forfeited to the other party, in case the oath be thereafter past from, or come out negative of the calumny.

XVIII. That two reclaiming petitions shall be allowed against every interlocutor; but no after-petition shall be received, except upon consignation of one shilling and sixpence sterling, which is to be restored to the configner, by warrant of the sheriff, in case the petition contain matter of importance, come to the petitioner's knowledge, since giving in the former petition, otherwise to be disposed of by the sheriff as above.

XIX. That all reclaiming petitions shall be lodged with the clerk, the evening before they are to be moved in court, otherwise they shall not be received, unless upon payment of one shilling sterling, to be disposed of as above.

XX. That, when parties differ as to facts, the sheriff, if he find cause, may order both, or either of them, to confess or deny such facts, either personally in court, or by a writing under their hand; and, if the party fail to comply with the order, he shall be held as confess.

XXI. That, when a proof is necessary, the party who insists for it shall condescend upon his mean of proof; and, if it be by the oath of the other party, a day shall be assigned for the said party's appearing and deponing.

XXII. That in all cases, where the value of the matter in issue exceeds the sum of thirty shillings sterling, no procurator shall be allowed to refer or defer any allegation to the oath of party, unless he be authorized by his client present in court, or by a written mandate from him for that purpose. But, if the value of the matter in issue does not exceed the sum of thirty shillings sterling, such reference or deference may be effectually made by the party's procurator without the necessity of a written mandate.

XXIII. That if the party do not appear upon the day assigned him to depone, the term shall be circumduced against him,

him, and he held as confest; but, if he do appear, his oath shall be taken, the other party paying the dues thereof.

XXIV. That, if the mean of proof be by writings, not in the party's hands, or by witnesses, a day shall be assigned for recovering such writings, or for proving by witnesses, and diligences shall be granted for that effect, to be reported against the day assigned.

XXV. That, when the day assigned for the diligence is elapsed, the party who obtained it shall report the same, and, if he do not, the term shall be circumduced against him: and, if the witnesses do not appear, second diligence shall be granted, on suit of the party, for apprehending and securing them, until they find caution to appear at the time to which the diligence is current.

XXVI. That, when the proof is concluded, the cause shall be called, and circumduction granted on the motion of both, or either party.

XXVII. That, when a point has been referred to oath of party, and thereafter another mean of proof is demanded, the same shall be allowed, provided the person who made the reference pay, over the bar, the full expences the other party has been put to, by the reference then past from.

XXVIII. That no party shall be reponed against a circumduction, except upon a petition showing cause to excuse his former failure, and upon payment of such sum as the sheriff shall modify, for indemnifying the other party.

XXIX. That, where a proof is concluded, and interlocutor pronounced thereon, the sheriff shall not allow any further proof, except upon very weighty reasons shown by the party who applies therefore, and upon payment of an amand, to be determined by the sheriff, besides indemnifying the other party, as above—But in all cases the oath of party is to be allowed, if demanded, any time before extracting the decret.

XXX. That the sum of expences to be given in any decret, whether in absence or *in foro*, shall be fixed specially by interlocutor, and no expences shall be modified of course, nor by a general reference to the conclusions of the libel.

XXXI. That no decret shall be extracted till after the expiry of six free days, exclusive of the day upon which it was signed by the sheriff, and of the day of extracting thereof, unless otherwise allowed by the sheriff.

XXXII. That in all cases which require extraordinary dispatch, and where the interest of the parties might suffer by abiding the ordinary induciæ, application by summary petition may be made to the sheriff, who will, if he see cause, ordain the petition to be intimated to the defender, and answers to be made thereto, upon such induciæ as to him shall seem proper; and he will likewise, where it is necessary, pronounce an interdict, to be intimated along with the petition.

XXXIII. That the clerk shall be authorized to issue out precepts of arrestment, upon producing to him a summons duly execute; or a written document of the debt for which arrestment is sought, the precept always setting forth the ground of the arrestment; and there shall not be granted any blank warrant for arrestment.

XXXIV. That when application is made to the sheriff, to interpone his authority to a baron's decret, the party against whom the decret was obtained, shall be regularly cited to hear and see the same interponed, otherwise the sheriff will have no regard to the application.

XXXV. That the clerk shall keep a diet-book in which shall be marked the several judicial steps of process, the acts and decreets: and all causes shall be called and determined, according to the order in which they are marked in this diet-book.

XXXVI. That the diet-book shall fix the custody of the process, upon the person by whom it is taken, or to whom it is returned judicially:—That the custody of processes borrowed up from the clerk *extra* judicially, shall be fixed by a receipt book, which he shall keep for that purpose.

XXXVII. That if a procurator keep up a process, of which he has the custody, longer than is proper, the sheriff upon application, will grant a caption against him for reproducing the process, and the procurator complained upon shall pay the expence of the caption.

TABLE of FEES and DUES of Clerks and other Officers in Sheriff and Stewart Courts in civil causes, as regulated by act of federunt, March 16, 1748.

	<i>Scots Money.</i>		
	<i>L.</i>	<i>s.</i>	<i>d.</i>
To registering each sheet of hornings, interdictions, inhibitions, and lawborrows, with their executions, to clerk and servants	0	16	6
For an extract of a horning, inhibition, interdiction, or lawborrows, with the execution, for the first sheet to clerk and servants		14	
Every other sheet		12	
For registrating each sheet of bonds, instruments of protest, tacks dispositions, and inventories of heirs entering <i>cum beneficio</i> , and for any other writings given in to be registrate, to clerk and servants	14	6	
For an extract of the fiars to clerk and servants	8		
For every libel or summons, where the sum is under forty pounds Scots	6		
For every libel or summons where the sum is above forty pounds Scots	12		
For every precept for summoning witnesses and parties <i>pro confesso</i>	2		
Letters of arrestment or loosing thereof	10		
For a petition or answer	6		
For writing a bond of cautionry	12		
For receiving thereof	6		
For producing an advocacy.	12		
<i>For WRITING of DEPOSITIONS of PARTIES and WITNESSES.</i>			
For every deposition of a party	12		
For each of the first six witnesses	12		
For every other witness	6		
	To		

To the clerk for extracting every decret not exceeding twenty five pounds Scots		12
To the clerk for extracting every decret, exceeding twenty five pounds, and not exceeding forty pounds Scots	I	
To the clerk for extracting every decret exceeding twenty five pounds, and not exceeding fixty pounds Scots	I	16
For writing and recording each sheet of these decreets		6
To clerks and servants, for extracting all decreets, acts, or commissions, in causes exceeding sixty pounds Scots in value, for the first sheet	I	10
For every other sheet		18
But, for every repeated sheet of a decret, where any acts or commissions have been extracted only		8
For every sheet of decreets of transumpt		14 6
That each sheet of an extract, written sheet-ways consist of forty nine lines, at the rate of thirteen words in each line; and, if wrote book-ways, that it consist of two pages, and of thirty six lines in each page, and after the rate of nine words in the line		
That, for every appeal entered against any decret, sentence or judgment, there be paid to the clerk, by the appellant, for recording the appeal, and taking the bond of caution		12
That the clerk insert the said appeal in every extract, to be thereafter given out by him of such decret, for which his dues are to be paid after the same rate as the rest of the extract		
And the lords ordain the said several clerks duly and faithfully to record all the decreets extracted by them, under the highest penalties inflicted by the law on such neglects of duty		
For a general service, to clerks and servants drawing the claim and expeding the service and to officers		

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and witnesses fees for executing the brieve at the market cross	9		
For acts of curatory, and process for making up tutorial or curatorial inventories, each sheet	3		

For SPECIAL SERVICES as follows.

To drawing the claim, expediting the service, and giving the retour or extract of the service, including officers and witnesses fees for executing the brieves for the first sheet	9		
For every other sheet	3		

For SEISINS to be PAID, as follows.

1st. The current price of the vellum in parchment for the time			
2nd. For the first sheet that it fills up of the clerk's protocol as notary	4		
And for every other sheet	3		

That the CLERK RECEIVE for his PAINS, for TAKING the INFESTMENT, as follows.

If it is taken at the distance from the clerk's office of three miles, or under, that he be paid for an estate not exceeding two thousand merks of yearly rent	12	12	
If exceeding two thousand and not exceeding five thousand merks	25	4	
If exceeding five thousand and not exceeding ten thousand merks	37	16	
If exceeding ten thousand and not exceeding twenty thousand merks	50	8	
And for an estate exceeding twenty thousand merks	63		
And no more whatever the estate be. If it exceeds three miles, that three pounds be paid for every other mile, that the clerk taking the seisin shall be obliged to travail to the place where seisin is given, until it amounts to ten miles	3		

And

	<i>L.</i>	<i>s.</i>	<i>d.</i>
And, if it exceed ten miles, for every other mile	i	10	
For sequestration of a bankrupt tenant's effects, such a sum as shall be judged reasonable by the sheriff the highest not exceeding	12		
The lowest not under	3		
And for each person qualifying in terms of law, and for the certificate thereof	1	4	
For transacted processes and decreets, the one half of what they would have amounted to if extracted			
And that services of relicts to their terre pay one half of special services, services of tutory to pay as general services, services of idiotry and furiosi- ty, to pay as general services, and the witnesses to be paid for as in other processes			
To the officer for summoning a party or witness, or charging to make payment on decret or precept, to himself, and two witnesses to the execution			8
But, if the parties or witnesses cited or charged, ex- ceed three in number, and are within one mile of one another in that case only for each			6
<i>Item,</i> For each mile the officer and his two wit- nesses travel, from the place of his residence, there shall be paid to him a further sum of six shilling, provided always that the whole sum paid the officer, for himself and his two witnesses, do not exceed half a crown, for one day, whatever be the number of miles, or number of parties or witnesses to be summoned			6
To the bar officers that attend the court for the oath of each party or witness			1
For executing of a caption for reproduction of a process			6
The officer for himself, witnesses and appraisers, &c. To be paid for poindings at the discretion of the party employer, for which the officer assigns him to the sheriff fee			

The

The FORM of PROCESS,

In CRIMINAL CAUSES.

I. That in all crimes which by their nature require, that the party accused should be incarcerated before trial, application shall be made to the sheriff, by petition, signed by the private party complaining, or by the procurator fiscal, setting forth the nature of the crime, and upon considering thereof, the sheriff shall grant warrant, for apprehending and incarcerating the party informed against, till such time as he shall be liberated in due course of law.

II. That crimes which infer loss of life, transportation, banishment forth of Scotland, or demembration, and others of great importance, shall only be tried by jury, unless where the contrary is appointed by special statute.

III. That in crimes to be tried by jury, the forms of the court of justiciary shall be followed; excepting only, that in all cases, the proof, with the objections to the witnesses, and answers shall be taken down in writing.

IV. That in the trial of crimes without jury, where the form is not directed by special statute the party accused shall be cited upon a proper summons signed by the clerk, and fully libelled; which summons shall charge the defender to compare personally, and to find caution, acted in the sheriff books, that he shall make answer to the libel, and appear at all the diets of court.

V. That the officer who executes the summons, shall deliver to the defender, if he finds him personally, or if he does not find him, shall leave at his dwelling-house, a full copy of the summons, together with a list of the names and designations of the witnesses to be adduced against him. That the officer's execution shall certify the delivery of such copy and list, and that six free days shall intervene betwixt the day of the citation and the day of comparance, exclusive of both these days.

VI. That every criminal summons, shall contain a warrant for citing witnesses, conform to a list to be signed by the prosecutor,

secutor, and given in to the clerk, and such witnesses shall be cited to appear on the same day, to which the defender is cited.

VII. That the defender against whom any criminal summons is executed, may take out letters of exculpation for proving his defence, if such proof be necessary; which letters the clerk shall be obliged to give out, on application of the defender, who shall therein cause cite his witnesses, to appear on the same day to which he himself is cited.

VIII. That in all cases which require extraordinary dispatch, the private party aggrieved, or the procurator fiscal, may apply to the sheriff by summary complaint, who will (if he see cause) ordain the complaint to be intimated to the defender, and him to appear personally in court, and to make answer to the same, upon such induciæ as the sheriff shall think proper.

IX. That if at the day appointed the defender appear, and the pursuer be absent, the diet shall be declared to be deserted, and the sheriff shall, if the circumstances of the case require it, award full costs, so as to indemnify the defender; which costs may be thereafter recovered by all manner of legal diligence.

X. That if at the day appointed, the defender do not compare and find caution, as above, the sheriff shall grant warrant to apprehend and detain him till he find caution.

XI. That after caution is found, if the defender shall fail to compare, his bail-bond shall be declared forfeited, and in both cases, whether caution has been found or not, the sheriff may (if the nature of the case admit of it) further proceed to consider the relevancy of the libel, and admit the same to the pursuer's probation, and to pass such sentence as may be pronounced against a person in absence.

XII. That upon the day of comparance, the defender shall either give in all his defences in writing, or shall make answer *viva voce*, to the facts contained in the libel; and, upon advising the libel and defences, the sheriff shall either pronounce an interlocutor upon the relevancy, or in case of difficulty, shall ordain informations to be given in.

XIII. That after pronouncing interlocutor upon the relevancy,

cy, the sheriff shall forthwith proceed to examine the witnesses adduced *hinc inde*, upon the facts admitted to probation; but probation by oath of party shall not be allowed in any case, where the fact referred has turpitude in it, or where the consequence may be more than pecuniary.

XIV. That if upon advising the proof, the sheriff shall find the defender guilty of what he is charged with, he shall fine, incarcerate, or inflict corporal punishment, according as the circumstances of the case require, and shall in all cases grant warrant for imprisoning the defender, until he shall make payment of the sums decerned against him, or till the day assigned for inflicting corporal punishment.

XV. That no sentence of any sheriff inflicting capital punishment or demembration, pronounced in any shire lying to the southward of the Frith, or river of Forth, shall be put to execution within less than thirty days after the date of such sentence; and if pronounced in any shire lying to the northward of the said Frith, or river of Forth, it shall not be put to execution within less than forty days, after the date of such sentence, in terms of the statute.

XVI. That no sentence of any sheriff, importing any corporal punishment less than death or demembration, shall be put to execution within less than 12 days after the date of such sentence: And that in the several cases referred to in this, as well as in the preceding regulations, the respective days, upon which sentence is pronounced and executed, shall not be numbered.

XVII. That the sheriff or his substitute shall attend at the ordinary court house, and place of meeting yearly upon the 22d days of July and of February, being lawful days, or on the next lawful day thereafter, if these be not lawful days, to receive such informations as shall be offered concerning matters criminal, which have happened within his jurisdiction, and may be tried at circuit courts in terms of the statute.

XVIII. That, if he find any of these informations to be articles of dittay, he shall make up particular accounts of the criminal facts, containing the names and designations, of the

offenders; the facts committed, with the circumstances of time and place; the names and designations of the witnesses, and the titles of such writs as are to be made use of at the trials.

XIX. That these informations shall be signed by the sheriff and the clerk, and the clerk shall transmit the same, with the first opportunity, to the lord justice clerk, or his deputies, together with such writs or other evidence of proof as may be necessary to be made use of in the trial; and that the clerk shall at the same time, transmit a list of forty five persons proper and fit to pass upon the assize of criminals.

XX. That, in the choice of the assize, care be taken that it be made in such manner, as to be as little burdensome as possible, and without any kind of partiality, and none shall be put upon this service but persons qualified, and in a condition to bear the expence which necessarily attends it.

XXI. That, when the porteous roll, and precept for executing it, is returned to the sheriff, he shall without delay grant warrant to his officers to execute the same.

XXII. That the sheriff, or his substitute, and the officer or officers, who executed the roll, shall attend the circuit court, and bring along with them the roll, together with the executions thereof.

TABLE of the FEES and DUES of Clerks and other Officers in Sheriff and Stewart courts, in CRIMINAL CASES, as regulate by Act of Adjournment March 21, 1748.

	Scots Money.		
	L.	s.	d.
When a private pursuer, to the procurator-fiscal for his concurrence		14	6
For complaint and warrant to cite, to the clerk		12	
For every oath of a party, to the clerk		12	
To ditto for the oath of a witness, for the first six, each		12	
Every oath above that number		6	

To

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To the clerk for every petition or answer		12
To ditto for letters of intimation or liberation, besides dues of the petition		18
To ditto for petition, and information and warrant of commitment	I	10
For criminal letters to ditto, for the first sheet	I	10
For every other sheet		18
To bill and letters of diligence on indictment	I	10
To ditto for bill and letters of exculpation	I	10
For a bail-bond from a defender for appearance	I	10
To clerk from the defender at deserting the diet	I	10
For recording every sheet of information, either for pursuer or defender	I	
For every appeal entered against any decret, sentence or judgment, there be paid to the clerk, by the appellant, for recording the appeal, and taking the bond of caution		12
To the clerk and servants for extracting decreets, acts or commissions for the first sheet	I	10
For every other sheet		18
That the clerk insert the said appeal in every extract to be thereafter given out by him of such decret for which his dues are to be paid after the same rate as the rest of the extract		
That each sheet of an extract, written sheet-ways, consist of forty nine lines at the rate of thirteen words in the line; and, if wrote book-ways that it consist of two pages, of thirty six lines in each page and after the rate of nine words in the line		
To the officer for summoning a party or witness, to himself and two witnesses to the execution, his employer furnishing the copy		8
But, if the parties or witnesses cited, exceed three in number and are within one mile of one another, in that case only for each		6
Item, for each mile, the officer and his two witnesses travel, from the place of his residence, there		shall

shall be paid to him a further sum of six shilling (provided always that the whole sum paid the officer for himself and his two witnesses, do not exceed half a crown for one day, whatever be the number of miles, or number of parties or witnesses, to be summoned, and that the employer furnish copies)

6

To the bar officers that attend the court, for the oath of each party or witness

1

To the officer and witnesses for summoning a whole affize of forty five persons in town, or a mile round, the employer furnishing the copies

2 5

Beside the above mentioned dues to the clerk, there is now a duty to the king, of one shilling sterling for each sheet on which is written a deposition of a party, in a cause above L5, or an extract of registered writings; except in causes for the poor, and the public, and bills under 40s. sterling.

LIBELLED SUMMONS *an a* BILL.

A. B. esq; sheriff depute of C. To

messengers

and mairs, jointly and severally, specially constituted, greeting. Whereas it is complained to me by D. E. merchant in F. That G. H. merchant there owes him fifty pounds, lawful money, contained in the said G. H's bill to him dated 1st January last, and payable three days after date, and the interest thereof, which he refuses or delays to pay; and therefore the said G. H. should be ordained by me to pay the said D. E. the aforesaid principal sum, and the interest thereof since due till payment, with the expence of plea. According to justice. As is alledged. Herefore, it is my will and I charge you to summon lawfully the said G. H. to appear in the sheriff court of C. the day of in the hour of cause to answer at the instance of the said D. E. and to his libel above specified, in order to be decreed conformable thereto, or to show cause

cause

cause for the contrary with certification. Given at C. the twenty ninth day of July one thousand seven hundred and eighty six.

LIBELLED SUMMONS *on an* ACCOUNT.

A. B. esq; &c. Whereas it is complained to me by D. E. merchant in F. that G. H. merchant there owes him the sum of twenty pounds lawful money, by an open account for goods bought by him from the complainer, beginning on 11th November 1783 and ending 31st December 1785, also the interest thereof since the date of the last article till payment, in name of damages; which the said G. H. refuses to pay. And therefore he ought to be ordained to pay the said D. E. the above mentioned principal sum and the interest thereof, with expences of plea, &c.

LIBELLED SUMMONS AGAINST *the* REPRESENTATIVE of a DEBTOR, *on the* PASSIVE TITLES.

A. B. esq; &c. Whereas it is complained to me by D. E. merchant in F. that the now deceased G. H. merchant there owed him the sum of twenty pounds, lawful money, by an open account for goods, bought by him from the complainer beginning on 11th November 1783, and ending on 31st December 1785, also the interest thereof since the date of the last article till payment, in name of damages. And that I. K. son and heir of the said G. H. is liable for the payment of this, as representing his father upon one or other of the passive titles known in law; also that he knows the same is owing, yet he refuses to pay. And therefore the said I. K. as representing his said father, should be ordained to pay, &c.

The passive titles, upon which the representatives of deceased debtors, are made liable for payment, are these. The intermeddling with the deceased's lands, or other heritable subjects, to which the intermeddler might have made up a title; or with the title deeds, or other writings. 2nd The apparent heir's purchasing a right to his ancestor's estate, otherwise than at a public roup. 3d His accepting a gratuitous right from the ancestor,

ancestor, to any part of that estate, to which he himself might have succeeded as heir. 4th His offering a peremptory defence against a debt for which he is sued before a court. 5th When the heir is charged to enter to his ancestor, and does not renounce to be heir. 6th When the heir passes by his immediate ancestor, who had been three years in possession, and serves heir to a person more remote, he is liable for the debts, and onerous deeds of the interjected person. 8th When the nearest of kin intermeddle with the moveable subjects of the deceased without a title.

LIBELLED SUMMONS *by an EXECUTOR AGAINST a DEBTOR.*

A. B. esq; &c. Whereas it is complained to me by D. E. merchant in F. son of and executor decerned and confirmed to the now deceased G. E. merchant in F. his father, that H. I. mason in K. owes the said G. E. the sum of fifty pounds sterling contained in his bill to the deceased, dated and payable and the interest thereof since the same became due till payment, but which he refuses to pay. And therefore the said H. I. ought to be ordained to pay the said principal sum, and the interest thereof to the complainer, as having right in manner foresaid. And this with expences of plea according to justice, &c.

LIBELLED SUMMONS *of FORTHCOMING, by an ARRESTING CREDITOR AGAINST his DEBTOR'S DEBTOR, and HIMSELF.*

A. B. esq; &c. Whereas it is complained to me by D. E. of F. against G. H. of I. principal defender, and K. L. of M. principal debtor, for his interest, that on the day of last, the complainer obtained my decree against the said K. L. for twenty pounds, lawful money, with one pound one shilling of expences of plea, and four shillings as the expence of extracting the decree. On which he raised my precept of arrestment, and in virtue thereof, he on last, caused arrest in the hands of the said G. H. thirty pounds law-
ful

ful money, cels or more, owing by him to the said K. L. and all effects in his custody belonging to him, to lie until the said D. E. shall be paid of the money contained in the said decree. As the decree and precept, and execution of arrestment more fully bear. And although, at the time of the arrestment, the said G. H. was resting to the said K. L. more money, or had more effects belonging to him, than will pay the sums in the said decree; yet both of them refuse to make the same forthcoming to the complainer. And therefore the said G. H. and K. L. for his interest, should be ordained to make forthcoming payment and satisfaction to the complainer of as much of the foresaid arrested money and effects as will pay him the principal sum and expences contained in his foresaid decree. According to justice, &c.

LIBELLED SUMMONS of SLANDER.

A. B. esq; &c. Whereas it is complained to me by D. E. of F. with concurrence of G. H. procurator fiscal of court for his interest, against I. K. of L. defendant, That by the common law of this kingdom, the attacking any of his majesty's subjects with opprobrious and slanderous language, and injuring him in his good name and reputation, is a crime of an heinous nature, and severely punishable. But true it is, that the said I. K. is guilty of the said crime against the said D. E. in so far as, upon the tenth day of July current, when the parties were together in the house of L. M. vintner in F. and in a public company, the said I. K. attacked the said D. E. in an unprovoked and disgraceful manner, and called him a scoundrel, a cheat and a villain, and said that nobody should have any dealings with him, for he would cheat them and affront them. By which the said D. E. is greatly injured, and suffers loss. And therefore the said I. K. ought and should be decreed and ordained to appear at the bar of the court, and acknowledge publicly the injury he has done to the said D. E. and to pay him twenty pounds, lawful money, of assythment, and damages, and also the expences of this process; and likewise be fined in ten pounds to the procurator fiscal, and be imprisoned till payment and performance,

in order to deter others from doing the like in time to come. According to justice, &c.

It may be observed on this libel, or action, that in all actions of injury, the year, day, place, and manner of the injury, should be specified in the libel; also the quantity of the damage, when it can be estimated.

*PETITION of a CREDITOR against a DEBTOR who designs to
LEAVE the COUNTRY in order to ESCAPE from JUSTICE.*

Unto the sheriff depute of the shire of P. and his substitutes.

The petition of A. B. merchant in C.

Humbly sheweth,

That D. E. shoemaker in F. is owing to the petitioner five pounds, lawful money, by his bill dated and payable with the interest. Also three pounds by an open account herewith produced, to which the petitioner offers to make oath, and that he has no other security for the debts. That the petitioner is credibly informed and has just reason to believe, that the said D. E. is meditating a sudden flight from this kingdom, with any effects he has, in order to escape from justice, and the payment of his debt; whereby the petitioner is in hazard of losing the said debt, and he offers caution for all damages that he may be found liable for, to the said D. E. by this application, if your lordship think it necessary from the petitioner's known circumstances.

May it therefore please your lordship to consider the premises, and to grant warrant to search for and apprehend the person of the said D. E. and to bring him before you in order to be examined, and thereafter to imprison him, until he find caution to appear and answer in any action at the petitioner's instance against him for payment of the said debt, within a short period after this date.

According to justice.

A. B.

P. July 31, 1786. In presence of G. H. Esq;
the Sheriff Substitute.

The petitioner being solemnly sworn and examined, de-
pones

pones that both the debts mentioned in the petition, are justly resting owing to him by the above named D. E. and that he has no other security for the same, but the bill and his account book. Also that he has been informed, and has just reason, to believe, that the said D. E. intends to flee suddenly from this kingdom, with his effects, in order to escape from justice, and the payment of his debt. And this he depones to be truth as he shall answer to God.

A. B.

G. H.

SAME DAY.

The sheriff having considered the foregoing petition and deposition, grants warrant to mairs and their assistants, to search for, and apprehend the person of the said D. E. and to bring him before him, in order to be examined.

SAME DAY.

The said D. E. being apprehended and examined in presence of the petitioner, confesses, that he owes the two debts mentioned in the petition, and intends to pay the same. But he denies he is to leave this kingdom, or escape from justice. He says he is only to go to A. the head borough of the next county, where he has taken a house, in order to follow his business; which is well known; and that the present application against him is groundless.

D. E.

G. H.

The sheriff having considered the above declaration, finds there is no proved intention of flight, or escape from justice, and therefore dismisses this process, and the said D. E.

G. H.

But if D. E. had owned the debt, and that he was to leave this kingdom (even of Scotland) or if he denied the debt, and gave no satisfactory account of his conduct, he would have been ordained to find caution, to the amount of the debt, to appear and answer to any action brought against him for the same, within a short period, or go to prison.

Lord Bankton observes on this head, that there must be some probable grounds of suspicion of the debtor's designed

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flight,

flight, as his private disposing of his household furniture, or the like. For the obtainer of such warrant will be liable in damages, if it was without foundation, and he must find caution for that effect. Nor will his oath of calumny, that he had reason to believe the debtor was to go off the country, excuse him; for, at that rate, every person who has freedom to swear, may affront, and exceedingly injure men of character and reputation. However, the judge in this case, ought to exact such oath for his own exoneration; nor must any summary warrant be given against strangers or inhabitants, till some ground of debt is shown to the judge; or, at least, the claimant give his oath of verity on the debt.

A most unwarrantable and unlawful use has been frequently made of the liberty allowed to creditors to apply for those warrants against their debtors. The editor has seen a glaring example of this. The creditor applied to a justice of peace against his debtor, setting forth, that the debtor owed him one sum by a bill, and another by an account. Another good person accepted the bill with the debtor, and he was residing on the spot. Therefore this debt ought not to have been put into the petition at all. The creditor was not sworn upon the verity of the debts, as Lord Bankton, and as reason say, he should have been; but he was sworn, and deposed, he was informed, and had good reason to believe, that the debtor was about to leave the country only. On which the justice of peace found the debtor was meditating flight, and granted warrant to imprison him, upon his own expence, till he found caution to appear and answer in any action for the debts, at the petitioner's instance, within six months, and to attend all the diets of court, under a penalty much more than the debts.

This warrant was backed, at once, by a justice of peace in another county, and thereon the debtor was summarily taken out of his own house, and thrown into prison, without being brought before the judge.

The fact as to him was this. He told openly for a month or two before hand, that he had taken a house in the head town of the neighbouring county, where he was to prosecute his

his business, and that this was notour in that town, and in the place where his creditor resided. And if the warrant had appointed him to be brought before the judge, in order to be examined, the fact would have appeared, and he could not have been found meditating flight from the country, and committed to prison.

In this case there were several unjustifiable things done against the liberty of the subjects. The bill itself was not actionable, and could not be approved by any judge, as it was not written upon stamped paper. The justice of peace passed over this, and also did not require the creditor's oath upon the debt, but hastened to take his oath upon what was feigned and affected by the creditor.

It was notorious, and the creditor himself knew, that the debtor was not fleeing from the kingdom, or doing any thing to escape justice; but only removing from one place to another, to get better business; yet he swore, the debtor was about to leave the country. And the judge instead of granting a warrant to bring the debtor before him, which it was his duty to do, gave judgment against him in his absence, and at once committed him to prison, on his own expence, and created an arbitrary penalty and time of appearance, against him, to the amount of which the debtor must find bail. In this manner did the first justice his part.

A matter of this kind does not fall under a breach of the peace, or the criminal law. But, in the case of a crime, or offence, where a warrant is issued by a justice of peace, and the person escapes into another county, a british statute says, any justice of peace in that other county, may indorse his name on the same warrant, on proof by oath of the hand writing of the granter of it, and bring the person before him, to produce bail, if the offence be bailable. Therefore in the present case, the warrant for account of debt, was presented to another justice as if it had been a crime, who required no proof of the granter's hand writing, and did not order the person before him, but granted his warrant to commit him, in the same way as the original warrant did, without attending to the consequences.

This

This should put all parties and judges on their guard against rash, and unlawful procedure in such matters; and not to do any thing against the liberty of their fellow subjects, but what the law clearly and equitably authorizes; or what they would wish to be done to themselves in the like situation; that is, not to be condemned, before they are heard, and have an opportunity to speak for themselves.

*PETITION of a CREDITOR in a Royal Borough against his
DEBTOR living without the Borough.*

Unto the Magistrates of D.

The petition of A. B. merchant in D.

Humbly sheweth,

That L. K. farmer in M. owes the petitioner ten pounds, lawful money, by an open account for goods bought and received by him from the petitioner, herewith produced. To which the petitioner is willing to make oath, and for which, he has no other security but his count book. And the said L. K. ought to be arrested and imprisoned, in terms of the statute in this behalf until he find caution to answer before your honours court, for the said debt, as law will, within a short period after this date.

May it therefore please your honours to grant warrant at the petitioner's instance for apprehending and imprisoning person of the said L. K. to the effect above mentioned.

According to justice.

A. B.

D. August 7, 1786. In presence of
Baillie T. W.

The petitioner being solemnly sworn and examined, depones affirmatively to his petition, on the debt he mentions, and this is truth as he shall answer to God.

A. B.

T. W.

SAME DAY.

The bailie having considered the foregoing petition and deposition, grants warrant for apprehending the person of L. K. complained

complained of, wherever he can be found within the jurisdiction of this borough, and to bring him before any of the magistrates to be examined.

T. W.

SAME DAY.

The said L. K. being apprehended and examined, and having acknowledged the debt mentioned in the petition, the bailie grants warrant for committing him to prison within the tolbooth of D. until he find caution to appear before the town court of D. at the instance of the said A. B. and answer for the said debt, as law will, within two months after this date.

T. W.

By act of parliament 1672. 6. 8. burgesſies of royal boroughs have the privilege to arrest strangers found within the borough, who are their debtors in open accounts of furnishing, till they find caution to answer before the town court, as law will. This is for facilitating payment of such debts for which no security is granted, and it is restricted to provisions, and merchant accounts, by the statute. This privilege is not competent to the assignees to such accounts. If the arrestment proceed otherwise than in terms of the statute, the bond of caution is void, and the user of it is liable to the party's damages.

Though the alledged debtor had denied the debt before the bailie, after being apprehended, yet he must have been committed on the creditor's oath, till he found caution.

PETITION *against* a SERVANT DESERTING *his* SERVICE.

Unto the sheriff depute of A. and his substitute. The petition of B. C. farmer in D.

Humbly sheweth,

That E. F. the petitioner's servant at D. is engaged to serve him for a year after martinmas last, at the wage of six pounds, lawful money. That on the twelfth day of August instant, the said E. F. took upon him to desert from his work, and the petitioner's service, without any good reason whatever, as he got his victuals sufficiently, and all discretion from the petitioner and his family.

That

That this conduct is not only a breach of the engagement with the petitioner, and a loss to him, but it is a bad example to his other servants, and to the country.

May it therefore please your lordship to consider the premises, and to grant warrant for apprehending the person of the said E. F. and bringing him before you, in order to be examined, and thereafter to commit him to prison till he find caution to fulfil his service with the petitioner, in a quiet and faithful manner; and to find him liable in expences to him, to be retained out of the first end of his wages according to justice.

B. C.

The judge will grant warrant accordingly. This point is now settled by the court of session, on the obvious principles of justice, and utility.

It will occur, that the application may be made to the justices of peace, as well as the sheriff.

ACT *for* PREVENTING WRONGOUS IMPRISONMENT, *and against* UNDUE DELAYS *in* TRIALS. *In the year 1701.*

Our sovereign Lord considering, it is the interest of all his good subjects, that the liberty of their persons be duly secured, and that it is declared by the *claim of right*, that the imprisonment of persons, without expressing the reasons thereof, and delaying to put them to trial, is contrary to law: Therefore, his majesty, with advice and consent of the estates of parliament statutes, enacts and ordains, that all informers shall sign their informations, and that no person shall hereafter be imprisoned for custody in order to trial, for any crime or offence, without a warrant in writ, expressing the particular cause for which he is imprisoned. And of which warrant the messenger, or executor thereof, before imprisonment, or the keeper of the prison receiving the same, is hereby ordained to give a just double immediately, under his hand, to the prisoner himself, for the end after specified. Declaring that all warrants for imprisonments on the account aforesaid, either proceeding upon information, not subscribed, or not expressing the particular cause, shall be void and null. And the judge, or officer of the law, and all others

others whomsoever subscribing the same, and the executor, or keeper of the prison who shall receive and detain the person, so wrongously ordered to be imprisoned, or refusing a double as said is, shall be liable in the punishment of wrongous imprisonment hereafter expressed.

And to the effect, that persons who are, or shall be imprisoned for custody in order to trial, may not be wrongously delayed, and detained, His Majesty, with advice and consent foresaid, statutes and ordains, that all crimes not inferring capital punishment, shall be bailable. And for clearing and establishing the method of finding bail in such cases, either before or after imprisonment, his majesty with advice and consent foresaid, statutes and ordains that it shall be lawful to the prisoner, or person ordered to be imprisoned, to apply to the committer, or commissioners of justiciary, or other judge competent, for cognition of the crime, and offer to find sufficient caution, that he the said prisoner, or person ordered to be imprisoned, shall appear, and answer to any libel that shall be offered against him, for the crime or offence wherewith he is charged, at any time within the space of six months. And that under such a penalty as the said committer, or the lords of justiciary, or other judge competent shall modify and appoint. And that upon the said application, the said committer, or Lords of Justiciary, or other judge competent, shall first cognosce, whether the crime be capital or not, in order to the finding bail alenarly; and if found bailable, then he or they shall be obliged to modify the sum for which the bail is to be found, within twenty four hours after the petition is presented to him or them respectively. The sum for which the bail is to be found, not exceeding six thousand merks for a nobleman, three thousand merks for a landed gentleman, one thousand merks for any other gentleman and burghers, and three hundred merks for any other inferior person, under the pain of wrongous imprisonment. And upon the party's finding sufficient bail, under the penalty modified at the sight of the said judge or judicatory respectively; and delivering or offering the same to the clerk, and instruments taken upon the delivery, or

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offer

offer of sufficient caution, the said committer or judicatory competent shall order his liberation, or discharge his imprisonment, if not incarcerated, under the penalty of wrongous imprisonment. As likewise, that sufficient bail, under the penalty modified, being offered to the judge or magistrate, to whom the execution of the warrant is directed, the said judge or magistrate shall be obliged, and is hereby appointed and ordained to accept the foresaid bail, and set the prisoner at liberty, under the like penalty of wrongous imprisonment.

And his majesty, with advice and consent foresaid, further statutes and ordains, that upon application of any prisoner for custody in order to trial, whether for capital orailable crimes, to any of the lords of justiciary, or other judge or judicatory competent for judging the crime or offence for which he is imprisoned, and the said prisoner producing the said double of the warrant of his imprisonment, under the keeper's hand, the said judge or judicatory competent, under the pain of wrongous imprisonment, are hereby ordained, within twenty four hours after the said application and petition is presented to him or them, to give out letters or precepts directed to messengers, for intimating to His Majesty's Advocate or procurator fiscal, and the party appearing by the warrant to be concerned, if any be within the kingdom, to fix a diet for the trial within sixty days after the intimation. Certifying His Majesty's Advocate or procurator fiscal, and the said party concerned, that if they fail, the prisoner shall be discharged, and set at liberty without delay. For doing whereof, the said judge or judicatory competent, are hereby expressly warranted, and strictly required and ordained to do the same, under the penalty foresaid, unless the delay be upon the prisoner's petition or desire.

And the diet of the trial being prefixed, the magistrates of the place, or keeper of the prison, shall then be obliged to deliver the prisoner to a sufficient guard to be provided by the judge, His Majesty's Advocate or procurator-fiscal, that the prisoner may be sifted before the judge competent, and his majesty's advocate, or procurator fiscal, shall insist in the libel, and the judge put the same to a trial, and the same shall be determined by a final

nal sentence within forty days, if before the lords of justiciary, and thirty days if before any other judge. And if His Majesty's Advocate or procurator fiscal, do not insist in the trial at the day appointed, and prosecute the same to the conclusion as aforesaid, his majesty, with advice foresaid, statutes and ordains that the diet shall then be simpliciter deserted, and the prisoner immediately liberate from his imprisonment for that crime or offence.

And if no process be raised and executed within the time allowed, or in case of not insisting at the diet, and bringing the process to a conclusion within the foresaid space, it shall be lawful to the prisoner to apply to the justice general, justice clerk, or any of the lords of justiciary, or judge competent respectively; and upon his application, and instructing that the time limited by law for insisting or concluding the process, is elapsed, and instruments taken thereupon, the said justice general, justice clerk, Lords of Justiciary, and judge competent, shall be obliged, within twenty four hours, to issue out letters or precepts directed to messengers, for charging the magistrates, or keepers of the prison where the prisoner is detained, for setting him at liberty, under the penalty of wrongous imprisonment, in case of delay or refusal to grant the said letters or precepts, or to set him at liberty after the charge. Without prejudice to the keeper of the prison, as to his dues in all cases of liberation, as formerly, before the making of this act.

And the prisoner being liberated in manner foresaid, it shall not be lawful to put or detain him in prison for the same crime, under the penalty of wrongous imprisonment, in case his former liberation be made known to the committer before the warrant be granted; or in case he be detained after his former imprisonment is sufficiently instructed to the keeper of the prison; who upon production of the former warrant of his liberation from his imprisonment for the same crime, shall be obliged to set the prisoner forthwith at liberty, unless there be new criminal letters raised before the commissioners of justiciary, and duly executed against the said prisoner.

In which case, it is hereby declared lawful to imprison him

of new, though the said letters be raised for the same crime, for which he was formerly incarcerated. And it shall be lawful, to apprehend and secure him at the time of executing the said letters, or at any time thereafter before trial, and to detain him till his trial, or that he be set at liberty in the due course of law. And His Majesty, with advice and consent foresaid, ordains His Majesty's Advocate to insist in the said libel, and prosecute the same to a final sentence within forty days after the said prisoner is of new incarcerated thereupon, unless the delay be upon the application, or at the desire of the prisoner; wherein if the king's advocate failie, the diet is to be deserted simpliciter, and the prisoner ordained to be set at liberty from the said imprisonment. And the process not being duly prosecuted as aforesaid, and the diet thereupon deserted, His Majesty with advice and consent foresaid, declares the party imprisoned a second time as aforesaid, to be for ever free from all question or process for the foresaid crime or offence.

Providing always, that in case of imprisonment for Treason, the prisoner shall not have access to apply for prefixing a diet for process, for forty days after his imprisonment, which are hereby allowed for preparing the process. After elapsing of which time, the lords of His Majesty's privy council, or lords of justiciary, or any of them, are hereby required, upon the application of the prisoner, to issue forth precepts, as in other cases. And in case of not insisting, or prosecuting the process as aforesaid, the prisoner shall be liberated upon sufficient bail, to compare at any time when called within twelve months, for his good and peaceable behaviour in the mean time. The said bail not exceeding the double of the bail in other crimes.

Declaring that the liberation provided by this present act, is only to be understood from imprisonments for the causes foresaid, and without prejudice of all personal diligence, or imprisonments for payment of debts, or upon sentence, or for any other causes than those above expressed, in the same way and manner, as was competent before the making hereof. And likewise, it is hereby provided and declared, That this present act is no ways to be extended to colliers or salters, and the

same

same is without prejudice or derogation from former laws, requiring bail to be given by chieftains, landlords, or others in the Highlands. Reserving likewise commitments, imprisonments, and the prosecution of thefts, robberies, and depredations in the borders and Highlands, according to the former laws and customs, any thing in this act notwithstanding. Without prejudice also to inferior magistrates, judges, or justices of peace; and constables, to take security of persons for their good behaviour, and keeping of the peace, as they have been in use formerly to do, or to imprison in order to trial, for indignities done to the said inferior magistrates, judges or justices of peace; or to imprison parties disobedient and contumacious to church censures, vagabonds and masterful beggars; or to imprison for riots, bloods, and batteries, or persons found acting in tumults; or for drunkenness, Sabbath-breaking and swearing, uncleanness, pickeries and thieving. For which causes or any of them, it shall be lawful to proceed as formerly, the person imprisoned having always his relief by offering bail, and demanding a trial as above. As also providing, That, in the case of imminent or actual invasion, rebellion, or insurrection, commitments may proceed, by order of the privy council, or any five of their number, upon suspicion of accession thereto, without being liable to any penalty for the said commitment, the person imprisoned having always his relief for trial or liberation as aforesaid.

And his majesty, with consent foresaid, statutes and ordains that the pain of wrongous imprisonment shall be six thousand pound for a nobleman, Four thousand pound for a landed gentleman, Two thousand pound for every other gentleman and burghers, and Four hundred pound for other persons. And if any prisoner be detained, after elapsing of the respective days, in manner above prescribed, for obtaining his liberty, the judges, magistrates, or others wrongously detaining, shall be liable in the pains following, viz. Of One hundred pounds for each day for a nobleman, Sixty six pound thirteen shilling four pennies, for a landed gentleman, Thirty three pound six shilling eight pennies, for other gentlemen and burghers, Six pound
thirteen

thirteen shilling four pennies for other persons. And further, shall lose their offices, and be incapable of public trust, by and attour the pains above specified. And the penalty to belong to the party imprisoned, and process to be competent for the same, before the lords of His Majesty's privy council, or before the lords of council and session, to be discussed by them summarily, without abiding the course of the Roll. And it is hereby declared, that the above penalties shall not be modified by any power or authority whatsoever.

And His Majesty, with advice and consent foresaid, extends this act for preventing wrongous imprisonment, to the case of all confinements, not either consented to by the party, or inflicted after trial by sentence. And further, discharges all close imprisonments beyond the space of eight days from the commitment, under the pains of wrongous imprisonment above set down. As also, that no person be transported forth of this kingdom, except with his own consent given before a judge, or by legal sentence. Certifying judges and magistrates, and all others, who shall give order otherwise, for the said transportation, as likewise all such who shall transport any person, without a lawful warrant from a judge or magistrate, that he shall be liable to the foresaid pains of wrongous imprisonment, as also of being deprived, and declared incapable of all public trust. And his majesty, with advice and consent foresaid enacts and declares, that action and process for wrongous imprisonment shall prescribe, if not pursued, within three years after the last day of the wrongous imprisonment; and process being once raised, the same shall prescribe, if not insisted in yearly thereafter. And it is hereby statute and ordained, by advice and consent foresaid, that no member of parliament attending, shall be imprisoned or confined upon any account whatsoever, during a session of parliament, without a warrant of parliament, reserving to the high constable and marischal their privileges and jurisdiction in the time of parliament as formerly. And also providing, that if any member shall happen to commit a capital crime, or if there be a manifest hazard of the peace, any magistrate may attach for securing of
the

the person or the peace, and deliver the person to the custody of the high constable, in order to the parliament's cognition the next federunt.

It is to be observed on this act, that when a prisoner is to apply for liberty on bail, he may do this to the judge or magistrate who commits him, or to the commissioners of justiciary, or other judge competent for cognition of the crime; but if he is to apply for a precept of intimation, in order to procure his trial, or liberty, he must do this to any of the lords of justiciary, or other judge competent for judging the crime. The committer, or judge who commits him, is in this case, not mentioned.

A case occurred, on the accusation of murder, where the prisoner was committed by a justice of peace. He applied to the justices for a precept of intimation, which he executed in the common way. He was served with an indictment to stand trial in the circuit court; but his agent having suggested to the court, a flaw in the indictment, the trial was put off, and he was committed of new by the lords. He then insisted on his precept being run, and no trial brought against him, or finished within the legal time, and therefore he should be set at liberty. It then was said from the crown side, that no precept was legally run, for the one founded on, was from the justices of peace, who are not competent judges for the trial of murder. At least they have never been in the use of doing so in Scotland. It was answered for the prisoner, that his precept was legal, as it was granted by the order of judges, who committed him, and who have commission and full power from the king, to inquire into, and judge in all capital crimes and felonys, according to the laws and statutes of the kingdom, and to punish the transgressors. The king's commission is not granted in vain, and though the justices of the peace, are not in use to judge in such matters they have power to do so, and they may do so when they please. Sir William Blackstone, on this head, acknowledges their power, though they do not exercise it.

This

This did not come to a decision, as the prisoner's agent found from the witnesses, that the man was safe, and allowed the trial to go on without objection, at the next circuit.

But from this it appears, that some attention is necessary in taking out a precept of intimation from the judge competent for the trial.

It is also to be observed, that in the case of an intimation for a trial, the act says, to fix a diet for the trial within sixty days after the intimation. A question arises, whether is the diet to be fixed for the trial to be held within the 60 days; or only intimated within the 60 days, for the trial to be held, either within, or without the 60 days, as it suits the prosecutor's convenience? This subtle distinction would not occur to a plain man of common sense, who considers the evident meaning of the words, and the design of the statute, which is in favour of the prisoners, and against delay. The lawyers have said, and pleaded, and printed, that they are obliged, only to fix a diet, but not to hold the trial, within 60 days. If this be true, the time for holding and finishing the trial, which was thought to be certain, and well known, is quite uncertain, and depending on the will of the prosecutors. Which is much against prisoners, and the act in this respect is thereby made in vain. But it is answered for the prisoners, that the act is made to secure the liberty of their persons, and to prevent delay in putting them to trial; and every sound interpretation ought to be made for this end. A diet for the trial and the diet of the trial being prefixed the prisoner may be sifted the prosecutor shall insist in the libel, the judge put the same to a trial do not insist at the day appointed. From all these it appears, that a diet *for* and *of* the trial, is the same. And to fix and appoint this diet, is the same thing as to fix the trial within the sixty days. There is no disjoining the diet, and the trial and within 60 days, from one another in the expression. This cannot be done either in the grammatical structure, or in the sense of the words. Therefore the obvious sense of the expression is, to appoint and fix the trial itself to be held within forty days certain,

certain, and to have the whole finished within forty days more. Which gives a fixed sense to the act; certainly to the prisoner, and prevents the delay from the indolence or other disposition of prosecutors, which the statute was made to prevent. Therefore the distinction above mentioned, and the delay and uncertainty pleaded for against the act, and against the prisoners, ought to be repelled.

It appears from the act, that persons imprisoned, for crimes not capital, may apply to be set at liberty, upon finding bail to appear within six months. The form of the petition for this purpose, is as follows.

Unto the sheriff depute of A. and his substitutes.

The petition of B. C. prisoner in the tolbooth of A.

Humbly sheweth,

That he is imprisoned by a warrant from your lordship, upon the signed information of D. E. for the alledged beating and bruising of him, to the effusion of his blood, in the manner mentioned in the said information, as an attested copy of that and of the warrant, under the hand of the keeper of the prison, herewith produced, doth shew. And the petitioner is willing to find sufficient bail to answer for the crime alledged against him, conformable to law.

May it therefore please your lordship to cognosce, whether the said crime beailable or not; and ifailable, to modify the sum for which the petitioner is to find bail; and upon his finding the same, to ordain him to be set at liberty.

According to justice.

C. B.

The order wrote by the clerk on the petition, is in this manner.

The sheriff having considered this petition, with the attested copy of the warrant of commitment, finds the crime for which the petitioner is charged,ailable; and ordains him to find caution in the sheriff court books, to answer to any libel or complaint which shall be exhibited against him, within six months after the date of the bond of caution, under the penalty of ; and upon finding such caution, ordains him to be set at liberty.

It should be observed, that as it was found by experience, that the sums for which bail is directed to be taken by the statute above mentioned, are too small; therefore by the act II. Geo. I. 25. It is made lawful to double the several sums, if the judge or magistrate shall think fit, upon the circumstances of the case.

Prisoners may also force their trials, by a petition to the judge who is competent to try the crime. The form of such a petition, is as follows.

Unto the sheriff depute of A. and his substitutes.

The petition of B. C. prisoner in the tolbooth of A.

Humbly sheweth,

That he is imprisoned in the said tolbooth by warrant of your lordship on the subscribed information against him at the instance of S. T. for the alleged crime of murder, of which an attested copy under the hand of the keeper of the prison, is herewith produced. And there is no appearance of his being brought to a trial, whereby he may vindicate his innocence. Therefore he addresses himself to your lordship for the benefit of the act of parliament made in the year 1701, intituled, act for preventing wrongous imprisonment, and against undue delays in trials.

May it therefore please your lordship to consider the premises, and to grant warrant for a precept or letters of intimation, for charging the procurator fiscal of court, and the party appearing by the warrant to be concerned, to fix a diet for the petitioner's trial, within sixty days, in the terms and under the certification mentioned in the said act.

According to justice.

B. C.

On this the judge within twenty four hours grants warrant for the letters of intimation, which by the court of justiciary, are given to a macer of court, or messenger, to execute. And by the same purity of reason, they ought to be given to the officers of inferior courts, or messengers, to execute; but by the inferior

inferior courts, they are limited to messengers only. This is an unnecessary hardship, and heavier expence on the prisoners.

After the days are run, and no trial brought, the prisoner takes an instrument of protest thereon and applies for letters of liberation after the following manner.

Unto the sheriff depute of A. and his substitutes.

The petition of B. C. prisoner within the tolbooth of A.

Humbly sheweth,

That upon a signed information given in against the petitioner by S. T. for the alleged crime of murder, he obtained a warrant from your lordship, and imprisoned the petitioner in the said tolbooth who being conscious of his innocency, applied to your lordship for letters of intimation, directed against H. I. procurator fiscal of court for his interest, and the said S. T. the private party concerned, to fix a diet for his trial, in the terms of the act of parliament in the year 1701. And your lordship having granted the desire thereof, the petitioner caused charge the said parties for that effect, conformable to the said letters and execution thereof herewith produced. And the sixty days from the date of the charge are more than elapsed, on which the petitioner has taken a protest, which is also produced, he therefore addresses your lordship for his liberation, in terms of the said act of parliament.

May it therefore please your lordship to grant warrant for the petitioner's liberation, as the law directs.

According to justice.

B. C.

On this the judge grants warrant for setting the prisoner at liberty. And after this he cannot be tried for the same crime, unless new criminal letters be issued out from the court of judicary, and the trial must be finished within forty days.

On EXCHANGE, and SALE.

Exchange, or permutation is, a contract whereby any thing, except money, is given in exchange for another. If it is agreed that money, or a price, shall be given for any thing, it is the contract of sale, which is more frequent than exchange.

Both these contracts are perfected concerning moveable subjects, by sole consent, all pactions are binding. In both these contracts, hidden insufficiency, if it hinder the use of the thing, makes way for annulling the bargain by an action at law. But if the insufficiency only render the thing less valuable, the buyer may have an abatement of the price, or, in an exchange, a reasonable compensation. But, whenever the insufficiency appears, the thing must be offered back, or protestation taken by a notary, or before witnesses; because retention will import ratification and acquiescence. If the receiver knew the insufficiency of the thing, or ought to have known it, as being self-evident, he has no remedy. If the seller or exchanger knew the faults or insufficiency of the thing delivered by him, whereof the receiver was ignorant, the deliverer is liable in all damages sustained therethrough. He who knowingly sells, or gives in exchange, cattle labouring under any infectious disease, must repair to the receiver, the whole loss he sustains through the spreading of the disease among his own cattle.

The presumption in such cases is, if the party had known the defect of the thing, which rendered it useless to him, as to the design for which he wanted the same, he would not have bought, or taken it in exchange. But, if it is only an inconsiderable defect in the thing, he has nothing to complain of, when he gets an equitable consideration on that head. And in every case, the whole damage, sustained by the fraud of another, ought to be repaired; as where one knowingly delivers to another, a vicious thing, whereby the other suffers detriment.

In a sale, the price must be in lawful, current money, and supposed to be adequate to the thing. It must likewise be certain, either by express agreement, or by reference to another's arbitrement. The price is held to be equal which pleases the parties.

Every thing is the subject of sale, or commerce, which is not forbidden. The bringing home, and selling poison is prohibited, except by apothecaries for compounding medicines.

And

And so are muirfowl and partridges forbidden to be bought, sold or used, during certain seasons.

For the encouragement of commerce, weekly markets, and quarterly or yearly fairs, are established in royal boroughs, boroughs of regality and barony. These are granted immediately, or derivatively by the sovereign. It is the great privilege of fairs, or those more solemn and large markets, that no goods, brought thereto can be attacked, or persons arrested in them for former debts. But they may, for crimes committed, or debts contracted, during the fair.

Markets and fairs are also secured from the abuses of *forestalling* them, or buying merchandize, coming thereto, before they are presented in open market; and of *regratting*, or buying victuals in the market, and selling the same there, or within four miles of it. These offences are all severely punishable.

The using of false weights and measures in merchandizing, is an high offence, and an act of great injustice, and destructive to commerce. It is prohibited, and also severely punishable by the court of justiciary, sheriff courts, and borough courts. Justices of the peace have also the charge of them, so far as to notice, and report them.

And that the common people may know the standard of the weights and measures, which ought to be used, they should be informed, that by the seventeenth article of the union, the same weights and measures shall be used throughout the united kingdom, as were then established in England, and standards of weights and measures shall be sent to Scotland from those kept in the exchequer at Westminster. This however never took place in many things; such as in corn and meal, butter, cheese &c. but the following measures and weights are said to have been ascertained about that time.

The Scots pint contains	103. 4	<i>Solid, English Inches</i>
The English wine pint	28 $\frac{1}{2}$	
—————Ale pint	35 $\frac{1}{2}$	
Scots wheat firlo	2197. 34	
—————Barley firlo	3205. 54	
English winchester bushel	2150. 42	

Averdupois

Averdupoise pound	7000 Grains of English Troy
Troy ounce	480
Scots ounce	476
Averdupois ounce	437½
Scots troy pound	7600
— Wheat firlo	21¼ Scots pints
— Barley, do.	31

Hence, the Scots wheat firlo, is to the English bushel, as 100 to 99 $\frac{21}{700}$. And the Scots, Paris, or Amsterdam pound, is to the English Avoirdupoise pound, as 38 to 35.

Beside, the Scots Troy weight, commonly known by the name of Dutch weight, there is another weight derived from it, called Tron weight, or old Scots weight, which varies in different places as custom hath established it. The pound, of Tron weight, runs from 19 to 24 ounces. And hay, wool, Scots lint, hemp, butter, cheese, tallow, &c. are always sold by this weight. It however should be abolished.

Meal is sold by weight, and it weighs eight stone Dutch, or Scots Troy weight per boll; and there are sixteen ounces in the pound of this weight.

So that the common people need be in no difficulty to know at any time, whether the weights and measures used by themselves, and their neighbours, be the legal standard, or not. And no other standard is allowed in common buying and selling, whatever people may do without being challenged.

In all bargains, the earnest which is given, is not essential to the bargain, but is only an evidence that the contract is perfected. If it be not otherwise expressed, the earnest ought to be counted in the price, and not be reckoned, dead earnest, or what is over and beside the price. And unless trust be given for the price, delivery of the goods does not transfer the property, till the price be paid, if the matter be soon followed out, but not, if delay be allowed. If the buyer procure the price to be trusted, when he knows himself to be insolvent, and immediately break, the seller may recover the property, even in competition with the buyer's creditors, if the goods be received within

within three days of the bankrupts going aside, by absconding or retiring to the sanctuary.

The thing sold, must be delivered at the time and place covenanted ; but if none is expressed, the seller ought instantly to deliver it, at the place where it is at the time, upon payment of the price. If the thing is sold upon trust, and before delivery, there appears hazard in getting the price, the seller may retain it until the price be paid, or security be granted for it. And the same equality takes place on the part of the buyer toward the seller.

The seller is bound to deliver, and to warrant the thing sold, to the buyer. And the warranty is absolute, or against all men, unless another kind be agreed to. Warranty gives recourse to the buyer, for his indemnity against the seller, in whole, or in part, with damages, and costs of suit ; and the same to the seller, against the buyer, in so far as he is in fault, or delay.

A person having got a pledge for money, though a day be appointed to relieve it, cannot, after that day, regularly sell it at his own hand, though by a roup ; he ought to get a warrant from a judge for doing it with safety.

After having touched a little on exchange and sale, it will be useful to add a comprehensive table of interest, for the prices of things sold, &c.

TABLE

T A B L E O F I N T E R E S T, SERVING FOR ALL RATES, DAYS, AND MONEY.

10,000,000	1,000,000	100,000	10,000	1,000	100	10	1
L. s. d. p.	L. s. d. p.	L. s. d. p.	L. s. d. p.	L. s. d. p.	L. s. d. p.	L. s. d. p.	L. s. d. p.
1369 17 3 1	136 19 8 7	13 13 11 7	1 7 4 8	0 2 8 9	0 0 3 3	0 0 0 3	0 0 0 0
2739 14 6 2	273 19 5 4	27 7 11 3	2 14 9 5	0 5 5 8	0 0 6 6	0 0 0 7	0 0 0 0
4109 11 9 4	410 19 2 1	41 1 11 0	4 2 2 3	0 8 2 6	0 0 9 9	0 0 1 0	0 0 0 1
5479 9 0 5	547 18 10 8	54 15 10 7	5 9 7 0	0 10 11 5	0 1 1 2	0 0 1 3	0 0 0 1
6849 6 3 6	684 18 7 6	68 9 10 4	6 16 11 8	0 13 8 4	0 1 4 5	0 0 1 6	0 0 0 1
8219 3 6 7	821 18 4 3	82 3 10 0	8 4 4 6	0 16 5 3	0 1 7 7	0 0 1 9	0 0 0 2
9589 0 9 8	958 18 1 0	95 17 9 7	9 11 9 4	0 19 2 1	0 1 11 0	0 0 2 3	0 0 0 2
10958 18 1 0	1095 17 9 7	109 11 9 4	10 19 2 1	1 1 11 0	0 2 2 3	0 0 2 6	0 0 0 2
12328 15 4 1	1232 17 6 4	123 5 9 0	12 6 6 9	1 4 7 9	0 5 5 6	0 0 3 0	0 0 0 3

If the sum consists of pounds, shillings, and pence, take the decimals of such shillings and pence. Thus the interest of £60. 9. 6. for 104 days is found, by multiplying 60.475 by 104 which makes 6289.4, the interest of which, (the fraction being of no account) I find in the table to be $\frac{17}{2}$ and 8 tenths,

L.	s.	d.	p.
Thus 6000 - -	16	5	3 Tenths
200 - -	00	6	6 Tenths
80 - -	00	2	6 Tenths
9 - -	00	0	3 Tenths

Principal 6289 Interest 17 2 8

Note. In calculating interest by days, as above a Leap year ought to be supposed to contain only 365, and not 366 days.

And with respect to the interest of shillings and pence, less than one pound, it is of so little value, and so obvious, that they who do not readily understand decimal fractions, may pass over the same in the operation, and keep to the pounds only.

ON STAMP DUTIES.

The editor might have given a list of the deeds or writs, which ought to be written on stamped paper, but there are so many new duties of late imposed, and in all probability to be imposed, that there would have been soon an alteration in this matter. And no person can be at a loss to get the sort of stamped paper, for his purpose at any time, if he tell the use he intends it for, to those who sell the paper. Beside, in the course of the Essay, the most of these things are noticed, so far as they are material.

F I N I S.

D I C T I O N A R Y

OF

LAW TERMS IN SCOTLAND.

FOR THE USE OF THE COMMON PEOPLE.

A B S

Abbreviate of an adjudication, an abridgment of a decret of adjudication of Land, signed by the Judge who pronounces the decret, and registered within 60 days after the decret.

Abdication, renouncing or giving up an office.

Abettor, one who encourages another to a criminal action, or who is art and part in the performance itself.

Abiding by a writing, to hold by a deed as true, when it is alledged to be false before a court.

Ability, the power of doing certain actions in acquiring or transferring property.

Abjuration, denying upon oath that the pretender has any right to the crown of this kingdom.

Abolition, the repealing of any law or statute.

Abrogation, the annulling or repealing a law.

Absence, when a person is summoned in a civil matter, and does not appear, the court

A C C

gives sentence in absence against him.

Abstracted multures, the dues of grinding corn, which is bound to a mill, kept back by those who are obliged to pay.

Acceptance, the accepting of a bill, or of an offer in bargaining.

Acceptor, the person who accepts a bill or offer.

Accession, the method of acquiring property, by which, of two things connected, the principal draws after it the accessory. The owner of a cow has the calf.

Accessory, is the subject acquired by accession; or the person who assists in committing a crime. He in general stands or falls with the principal.

Accommodation, the agreeable issue of a debate.

Accomplice, the same as accessory.

Accord, the accommodation between parties at variance by an offer accepted.

Accretion, the property acquired

quired in an unoccupied thing by its adhering to, or following another which is occupied. A legacy left to two persons, one of whom dies before the testator, devolves to the survivor.

Accumulation, the concurrence of several titles to the same thing, or of several circumstances to the same proof.

Accusation, the charging any person with a criminal action, in ones own name, or in that of the public. It differs little from impeachment, or indictment.

◆ *Acquiescence*, the consent of a person to the determination of another in his cause; which concludes him.

Acquisition, or acquist, the right or title to an estate got by purchase or donation.

Acquittal, a discharge, deliverance, or setting a person free from the guilt or suspicion of an offence.

Acquittance, a release, a discharge in writing for a sum of money.

Acre, the universal measure of land in Britain. In England it contains four square roods; a rood contains 40 square perches or poles, of 16½ feet each. In Scotland, an acre contains four square roods, a rood 40 square fells; a fall 36 square ells. And the Scots acre is the English acre, as 100,000 to 78,694.

Act, an instrument in wri-

ting for declaring the truth of any thing; or an order in a process.

Act of curatory, the deed of a court authorising curators who are elected by a minor, to manage his affairs.

Act and commission for taking a proof, the extracted warrant of a Judge to the person therein named, for taking a proof by witnesses, &c. and to report.

Act of parliament, the statute of the King, Lords and Commons on any subject.

Action, or law suit, or process, play, pursuit, is a demand before a Judge for obtaining what is due.

Addition, or designation, the title of a man beside his name and surname.

Adherence, Action of, an action of a husband or wife against the other, to compel either party to adhere in case of wilful desertion.

Adjournment, putting off a court or meeting to another time.

Adjudication, a decret of the Court of Session, whereby a creditor attaches the land and other heritable estate of his debtor for payment or security. It is either general, of all the lands, and redeemable in ten years; or special, of a part, and redeemable in 5 years.

Adminicles, any writings referred to for proving an allegation in a process.

Administration, the government

A D V

ment or management of affairs; and particularly the exercise of distributive justice.

Administrator, the power of a father over the persons and estates of his children during their minority. Or a tutor or curator for pupils, Minors, or fatuous persons.

Administratrix, a woman who acts as administrator.

Admiral High, is a Judge of supreme jurisdiction, in all maritime causes within Scotland.

Admiralty, High Court of, is the court in which the High Admiral is Judge.

Adversary, a person who is an enemy to or opposes another.

Adult, a youth between fourteen and twenty-one years of age.

Adultery, an unlawful commerce between one married person and another, or between a married and unmarried person. The punishment of open adultery is death.

Advocate, a Lawyer who undertakes the prosecution and defence of causes.

Advocate, King's, the principal Crown Lawyer in Scotland.

Advocates, Faculty of, the body of Lawyers who plead in all causes before the high courts of Scotland.

Advocation, Bill of, is a petition to the Court of Session, by a party before an inferior court, to call the action from the latter to the former.

A G G

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Advocation, letters of, the decree of the Court of Session, on a bill of advocation.

Advouson, the Right of Patronage, or of presenting to a vacant benefice.

Affiance, the mutual plighting of troth between a man and woman, to marry each other.

Affidavit, an oath in writing, sworn before a person authorised to take it.

Affinity, the connection between one of the married persons and the blood relations of the other.

Affirmation, the confirming of the sentence of an inferior court, by the supreme court. Or, it is the solemn declaration of the Quakers, which is allowed for an oath.

Affray, a skirmish or fight between two or more persons.

Age, a certain period of life, when persons of both sexes are enabled to do certain acts. Twenty one, is called full age.

Agent, a person intrusted with the management of an affair.

Agent and Patient, a person who is the doer of a thing, and also the person to whom it is done.

Aggravation, denotes whatever heightens a crime, or renders it more black.

Aggressor, the person who begins a quarrel, or makes the first assault. Who was the aggressor? is the first enquiry.

Agnate, any male relation by the father's side.

Agreement, the consent of several persons to a thing done or to be done.

Aid, any kind of assistance.

Alba firma, or *Album*, was rent paid in silver, and not in corn, which was called black-mail.

Alibi, when a person is accused of a crime committed in a certain place, and at a certain time, and he proves he was elsewhere, it is said, he proves alibi, or elsewhere.

Alien, a person who owes allegiance to a foreign Prince, he cannot hold a feudal right in Scotland, without being naturalized in legal form.

Alienation, the making over a man's property in lands, effects, &c. to another person, by writing and delivery.

Alienation in mortmain, the making over lands, &c. to a body politic, or to a religious house.

Aliment, obligation of, the natural obligation of parents to provide their children with the necessaries of life.

Alimentary Debt, an obligation on a person to pay a yearly sum for the maintenance of another. It is not arrestable by creditors.

Allegation, a plea or argument.

Allegiance, the obedience which every subject owes to his Sovereign.

Allegiance, oath of, is taken in acknowledgment of the King as a temporal prince.

Alliance, the relation between two persons or families by marriage, or a treaty between sovereign princes for mutual safety.

Allodial goods, are those enjoyed by the owner independent of any other person.

Allodium, *alleud*, lands which are the absolute property of their owner, without being obliged to any service or acknowledgment to a superior Lord. There are no allodial lands in Britain.

Alluvion, the gradual increase of land along the sea-shore, or the banks of rivers.

Ally, a Sovereign Prince or State who has entered into alliance with others.

Ambulatory, such courts as were not fixed, but removed sometimes to one place, sometimes to another.

Amendment, the correction of an error, or addition of an omission made in the libel or process, before the plea is pleaded, but after it is pleaded the amendment must be made with leave of the court.

Amercement, or *amerciament*, a pecuniary punishment imposed on offenders at the mercy of the court.

Amicus curiæ, denotes a bystander who informs the court of a matter in law which is doubtful or mistaken.

Ancestors,

A P P

a person is descended in a straight line.

Ann, or annat, is half a years stipend due to the executors of a minister, beside what was due to himself.

Annexation, the uniting of lands or rents to the crown.

Anni nubile, the marriagable age of a woman, at 12.

Annual rent, the yearly interest, or profit due by a debtor to a creditor for the use of money.

Annual rent, right of, the original method of burdening lands with a yearly payment for the loan of money, before interest was allowed.

Annuity, a sum of money payable yearly or termly, for a certain number of years.

Annulling, the cancelling, or making void a deed, sentence, or the like.

Annus deliberandi, the year allowed to an heir from the ancestor's death, to deliberate whether he will enter heir to him or not.

Anomalous, whatever is irregular, or deviates from the rule observed in other things of the like nature.

Answer to a Petition, the return or defence made by a party to a petition of another party served upon him.

Antedate, a spurious or false-date, prior to the true date of a bond, bill, or the like.

Appertura tabularum, the

A R R

v

breaking open a last will and testament.

Apparent heir, the person entitled to succeed to the estate of a defunct before he is entered.

Appeal, the removal of a cause from an inferior court to a superior.

Appearance, a defendants attendance in court on being summoned.

Appellant, one who makes appeal.

Appellee, the person against whom an appeal is brought.

Arbiter, a person to whose decision any dispute is referred by the parties.

Arbitrary punishment, such as is by law left to the discretion of the Judge, below what is capital.

Arbitration, arbitrage, or arbitrement, the power given by contending parties, to an arbiter, to settle their matters, on which he pronounces a decreet arbitral.

Arbitrator, a private extraordinary Judge, chosen by the partys, to determine controversies among them.

Arraignment, to set an action in order, or to call a person to answer in form of law, upon an indictment, &c.

Arrear, the remainder of rent, or an account, or the like, unpaid.

Arrest, to apprehend and restrain a person, in order to oblige him to be obedient to the

the law; or to attach the effects of ones debtor in the custody of third parties, till the debt be paid or secured.

Arrest of Judgment, the assigning just reasons, why judgment should not pass.

Art and part, an accessory to a deed.

Ascendant, is he who succeeds to his son, nephew, or the like; the opposite of descendant.

Assault, a violent injury offered to a man's person, being of a higher nature than battery.

Assedation, a perpetual tack.

Assessor, an inferior officer of Justice, who assists the ordinary Judge with his opinion and advice.

Assign, or *Assignee*; a person to whom a thing is assigned or conveyed.

Assigner, he who conveys or assigns any thing.

Assigning, the giving over a right, or in a particular sense the setting forth a reason or pointing out any thing.

Assize, the same as Jury, or inquest, 15 men.

Assythment, the indemnification made to an injured party.

Astriction, or *Thirlage*, being bound to carry and grind corn at a particular mill, and to pay the ordinary dues of multure, sequels and services.

Assylum, a sanctuary or place of refuge for criminals or debtors. There is none for criminals in Scotland.

Attainder, the art of attainting, or finding guilty.

Attainted, found guilty of a crime, as treason, &c.

Attestation, witnessing the truth of any thing in writing.

Attorney, a person who takes upon him the charge of other men's business in their absence.

Attorney, letter of, the power or warrant given in writing to an Attorney.

Auction, or *Roup*, is a public sale of any thing, by which the highest bidder is always the buyer. The seller dare not interpose to cause one bid for him.

Avail of Marriage, an ancient casualty due to the superior, by the vassal on his attaining the age of puberty, or 14 years.

Auditor, one who regularly hears, examines, and settles the accounts in many offices.

Average, a medium, or mean proportion of any thing.

Averment, declaring any thing, or establishing it in a positive manner.

Aversionem per, *Sale*, is a sale by the lump, or the whole of any thing.

Authentic, something of acknowledged and received authority; or clothed in all its formalities.

Award, the Judgment of an arbiter, who is chosen by the parties to end their differences.

Axiom, or maxim; is a rule inferred from several cases depending

pending on the same ground of law; which is incontestible and to be received without proof.

B

Back-bond, is a bond granted by him who receives a deed in order to declare the purpose of the deed, and to bind the grantor to perform accordingly.

Back-tack, is the tack or lease granted by the wadsetter or heritable creditor of lands, to the reverser or debtor.

Bail, the surety for a prisoner's appearance to stand trial, on which he is admitted to bail, or liberty.

Bailie, a magistrate in Royal Boroughs; also a Judge appointed by a baron.

Bairns part of gear, is that portion of the effects which by the law falls to the children of a marriage on the death of either of their parents. This is two third parts, when their father dies first, and one third, if the mother.

Bankrupt, a person in trade, who becomes insolvent.

Ban, or *Bann*, a solemn publication of any thing. As the asking of bans, before marriage.

Bar, the inclosure in a court, where the council plead causes. Also a plea by the defendant, which bars or destroys the plaintiff's action.

Bargain, an agreement, or contract concerning sale, in

which good faith should be observed.

Baron, a degree of nobility next below a Viscount, and above a Baronet. Also one holding lands of the Crown with Jurisdiction to recover his rents and mill services; and to hold pleas of debt not exceeding 40s. and for fines not exceeding 20s. &c. Likewise an office, as Baron of the exchequer, &c.

Baronet, a degree of honour next to a Baron; it has sir, attributed to the name, and lady to his wife.

Barony, the honour and territory of a Baron.

Base-right, a right of land holden of the grantor, which is a lower and more private right than that which is held of the grantor's superior.

Bastard, one born out of marriage. He cannot succeed by course of law to his parents, nor make a testament unless he is legitimated by the King.

Battery, the striking, beating, or offering violence to another person. Battery pendente lite, is the invading, wounding, or slaying of one party by the other, during the dependence of a law-suit between them, whereby the invader loses the plea irrecoverably.

Behaviour as heir, *Gestio pro herede*; is the apparent heir of any proprietor of lands intermeddling

meddling with the land, rents, or writings before his entry; whereby he is liable for his ancestors debts.

Bench, a tribunal, or judgment seat.

Benefice, a church endowed with a revenue for the performance of divine service.

Beneficium competentiae, the benefit of subsistence, by which a father, or grandfather is allowed as much out of the provision made by him to his children or grand-children, as is necessary for his own subsistence.

Beneficium inventarii, the benefit of inventory; is competent to an heir, who, within a year after his ancestors death, gives up an inventory of his ancestors heritable subjects. By this, he is liable for no more debt than the value of the inventory.

Beneficium ordinis, or of discussion; is the benefit competent to a simple cautioner for a debt, of having the principal debtor discussed by the creditor; or a horning denounced and registered, his moveables pointed, and his heritage adjudged, before the cautioner pay.

Bestial, or *Bestial*, all sorts of cattle, or other beasts.

Bigamy, the possession of two husbands, or two wives at the same time. Which is punishable as perjury, by confiscation of moveables, imprisonment, and infamy.

Bill, a petition to a court.

Bill of exchange, the obligation of a debtor to pay money to his creditor. It is called an inland Bill, when it is between persons of the same country.

Blackmail, a consideration paid formerly, by poor people to persons of note and power, to protect them from moss-troopers, or robbers.

Blanch holding, a tenure by which the vassal is obliged to pay his superior only an elusory duty yearly.

Blasphemy, an indignity or injury offered to God, by denying what is his due, or attributing to the creature what is due only to the creator. It is punishable with death.

Bloodwite; the guilt of blood, a fine for shedding blood.

Blow, any kind of stroke, with the hand or a weapon.

Bona fides, honesty of opinion or intention in doing any thing.

Band, a formal deed of a debtor, on stamped paper to pay money or perform a thing to his creditor, under a penalty.

Bondage, is slavery, or villanage.

Borgh, is a pledge or surety.

Borgh of Hambald, is caution found by the seller to the buyer, to make the goods sold, forthcoming.

Borough, a body corporate, made by the King, of the inhabitants of a certain tract of ground

B U L

ground, and endowed with Jurisdiction and privileges.

Boroughs Royal, are Corporations for the advantage of trade, made by the king. They generally send commissioners to Parliament, and they send yearly commissioners to the general convention of the Boroughs at Edinburgh.

Boroughs Law, caution found to keep the peace.

Bote, a recompence, or amends.

Bottomry, a marine contract for borrowing money on the bottom of a ship; or the lending of money to a merchant, for a greater sum at the return of a ship, the lender standing to the hazard of the voyage.

Bovata terra, an oxgate of land, or 13 acres, 4 oxgates make one pound land of old extent.

Breach, where a person breaks thro' the condition of a bond or covenant.

Breach of arrestment, where a person delivers money or goods to the owner after an arrestment is laid into his hand by a creditor of the owner. Whereby the breaker of the arrestment is liable for the debt, &c.

Breve or Brief, a writ from the chancery to a Judge, authorizing him to call a Jury for enquiring into the case, and to pronounce Sentence on their oath.

Bullion, uncoined gold, or silver in the mass.

C A N ix

Burgage, a tenure whereby the inhabitants of a borough by custom or charter hold their lands of the king, or other superior, for watching, and warding, &c.

Burglary, the breaking and entering into the dwelling-house of another person in the night time, with intent to commit some felony.

By-laws, private and peculiar laws for the good government of a city, court, or other community, made by the general consent of the members. They are to be reasonable, for the common benefit, and agreeable to the public laws.

Byr laws, are made by neighbours in the country elected by common consent in byrlaw courts. The Byrlaw men or Judges take cognisance of complaints between neighbour and neighbour, and observe the customary dutys of the tenants to their landlords, &c.

C

Calling the house, in the British parliament, is calling over the members names, every one answering to his own, and going out of the house in the order wherein he is called.

Calumny, slander, or a false charge.

Candlemas, the second day of February, a term.

Canon, a rule, sometimes a few duty.

B *Canon-law*,

Canon-law, a collection of ecclesiastical laws, serving as the rule of church government, and other matters. It is of little use in Scotland.

Capital crime, such an one as subjects the criminal to the loss of his head or life.

Capitation, a tax on each person.

Caption, a writ to apprehend and imprison a person till he make payment, or satisfaction to the creditor.

Casualties of superiority, those duties which a superior has right to from his vassal, beside the yearly duty, in his charter, as nonentry, relief, liferent escheat, disclamation and purpessure.

Casus amissionis, the specifying of an accident, by which a writing was lost, in the creditors custody, when he is suing to prove the tenor of it.

Caveat, a formal intimation to a Judge, or office, notifying, that they should beware how they act in the specified matter.

Caution, is otherwise called Bail, or surety.

Caution, Juratory, such as he who petitions for a suspension of a sentence, swears he can get.

Certification, in summonses, &c. the assurance given expressly, or implied, that if the party do not appear, the Judge will proceed as if he were present.

Cessio bonorum, an action by

which a debtor in prison obtains personal liberty, on delivering up all his real and personal estate to his creditors.

Challenge, an objection against a Jurymen, or witness, that he is not impartial; or against a deed, that it is not true, or valid.

Chance-medly, the accidental killing of a man, without any evil intention, and while acting lawfully.

Charter, a written instrument, or evidence of a thing; or it is a deed for the conveyance of land, and especially for the grant of the Feudal subject by the superior to the vassal on stamped parchment.

Chattels, all sorts of goods, moveable, and unmoveable, except such as are of freehold.

Circuit, a longer course of proceeding at law than is necessary to recover the thing sued for. Or it is the journey which the Judges take twice a year thro' the kingdom, to administer justice in criminal matters, &c.

Circuit court of Justiciary, the Court held by the Judges on their Circuit.

Circumduction, shutting up or concluding; is the order of a Judge declaring the parties barred from further hearing or proof on the points that are specified.

Civil, something which regards the policy, public good, or peace of the citizens; as civil

civil government, civil law, &c. or it is the ordinary procedure in an action of Debt, &c. opposed to criminal.

Civil law, the law of each state; or it is the Roman law which is written in Latin, and has no authority in Britain, but in so far as any part of it is adopted.

Claim, a challenge of interest in any thing, which is in possession of another.

Clandestine, any thing done without the knowledge of the parties concerned, or without the proper solemnities.

Clare-constat, *Precept of*, is the warrant of a superior for investing the heir of his former vassal in the property of the subject, without the verdict of an inquest.

Clause, an article, or particular stipulation in a contract, a charge, or condition in a testament, &c.

Clergy, the general name given to the body of Ecclesiastics in the church, in distinction from the laity.

Clergy, *Benefit of*, a privilege in the case of felonies, whereby the guilty person, instead of being put to death, is burned in the hand, or otherwise punished with less than death.

Code, a collection of the laws and constitutions of the Roman Emperors, made by order of Justinian.

Codicil, a supplement or ad-

dition made by a Testator to his last-will or testament.

Cognate, any male relation thro' the mother.

Cognitionis, Causa, Decree of; is a decree, not against the heir of a deceased Debtor, for he renounces the succession, but it is against the estate of the debtor.

Cohabitation, the state of a man and woman living together like husband and wife, without being legally married. This continued for a year and day, is deemed equal to marriage.

Co-heir, one who succeeds to a share of an inheritance, which is to be divided among several.

Coin, all manner of the several stamps, and species of money in any nation.

Collation, is the bestowing of a benefice on a clergyman by a Presbytery, who have it in their own gift. Or it is the comparison of a copy with an original writing. Or it is that right which an heir has of throwing the heritable and moveable estate of the deceased, into one mass, and sharing the same equally with the other nearest of kin.

Collegatary, a person who has a legacy in common with others.

College of Justice, Court of Session, or of Council and Session. is the supreme Civil Court of Scotland, composed of 15 Judges.

Collusion, a Secret understanding between two parties, who proceed fraudulently against each other, to the prejudice of a third person.

Commissary, a Bishops official or Judge, for the confirmation of testaments, for Actions of slander, &c.

Commission, the Warrant or letters patent granted to all persons exercising Jurisdiction, giving them power to hear and determine law suits.

Committee, one or more persons to whom the consideration of a matter is referred, either by some Court, or the consent of parties.

Commixtion, a method of acquiring property by mixing together different substances belonging to different proprietors.

Commodate, a gratuitous loan, of which the property is the lenders, and the use is the borrowers.

Common-law, that body of rules and customs received as law, before and beside the statute law.

Common, that soil, of which the use is common to this or that town or lairdship.

Commons, House of, the denomination given to the lower house of Parliament, or representatives of the people.

Commonly, lands belonging to two or more common proprietors. Or a Moor belonging to one, but on which o-

thers have had promiscuous possession of pasturage, &c.

Communion of Goods, the mutual communication of civil interests, or moveable subjects, and the fruits of heritable subjects, which take place between man and wife.

Commutation, the change of a penalty or punishment from a greater to a less.

Compensation, the meeting of mutual obligations, which extinguish one another, in whole or in part.

Competency, the power and authority of a judge for taking cognisance of any matter.

Competition, the claims of more than one person to one thing, stated before a court.

Compromise, an agreement of parties at Difference, whereby they settle the matter, or refer it to Arbiters.

Concluded cause, is where a proof has been brought, and declared by the Judge to be concluded.

Condition, an obligatory clause or article of a treaty or contract.

Confession, an acknowledgment of some truth tho' it be in prejudice of the person who makes the declaration.

Confirmation, is made by a superior's ratifying a deed in favour of his vassal.

Confirmation of a Testament, is made by the commissary approving and ratifying the testament of deceased persons.

Confiscation,

Confiscation, the adjudication of a criminal's effects to the treasury.

Confusion, the method of extinguishing obligations, where the debt and credit meet in the same person.

Congress, the trial before surgeons and matrons, to prove, whether a man be impotent, or not, before sentence for dissolving a marriage, is passed on the head of impotency.

Conjunct rights, are granted to two or more persons in joint fee.

Conjunct and confident persons, are those who receive conveyances of subjects from debtors, in prejudice of the other creditors. Such persons are generally near relations, or have the confidence of the debtor.

Conquest, is the real addition made by purchase or gift, to a father's estate, during the marriage.

Consanguinity, the Relation between persons of the same blood, or who are sprung from the same root.

Conservator, an officer ordained for the preservation of privileges of some cities and communities, with commission to Judge of their differences. As the conservator of the scots privileges at Campvere.

Consignation of money, is a deposit made, where the debt is called into question, or where the creditor refuses to receive his money. For which 5 per

cent. is generally allowed to the consignee who receives and keeps the money.

Consistorial court, is the commissaries court.

Conspiracy, an agreement of men to do evil, or falsely to indict, or cause to be indicted an innocent person of felony.

Constable of Scotland, an ancient officer of the crown, who had cognizance of crimes committed within two leagues of the court.

Constables to Justices of the Peace, are officers for executing their orders. They have power to suppress tumults, to apprehend delinquents, and those who can give no good account of themselves, and carry them before the next Justice of peace.

Constitution, the form of Government in any country or kingdom. Also an ordinance made by a superior power.

Contract, the mutual consent of two or more persons who oblige themselves to do something.

Contravention, a man's failing to discharge his obligation or duty, or transgressing the same.

Contribution of Goods, an obligation by maritime law, whereby the owners of the ship and goods, which are saved in a storm, are obliged to contribute for the relief of those whose goods were thrown

over board, for the common safety.

Convention, a treaty, contract or agreement between two or more parties.

Conveyance, a deed or instrument, which passes land or goods from one person to another, on stamped paper.

Convict, a person found guilty of a crime by a Jury or Judge.

Copartnery, or Copartnership, the state of bearing part, or possessing a share in a common stock or business.

Coroner, an officer employed for the king and crown. His duty is to enquire how any violent death was occasioned.

Corporation, a body politic, or incorporate, the members of which are qualified to take and grant, &c.

Correi debendi, two or more persons bound as principal debtors to a creditor.

Corroboration, strengthening or confirming a thing; as a bond of corroboration, is a new bond by the debtor or another person for an old debt.

Corruption of Blood, is an infection accruing to a man's state, who is attainted of felony and treason, and to his issue.

Covenant, an agreement or contract between two or more persons, to do something.

Coverture, the state of a married woman who is under the power of her husband.

Council, Privy, the primum mobile of the civil government of Britain, which bear part of the great weight that otherwise would be too heavy for the king. Of them the king has a select number, called, the cabinet council, with whom he determines the most of things.

Counsellor at Law, a person retained by a Client to plead his cause before a court of Judicature.

Counterfeits, persons who get money and goods by counterfeit letters or false tokens, and are liable to punishment.

Counter signing, is signing the writing of a superior, in quality of secretary. Charters are signed by the king, and counter signed by a Secretary of State or Lord Chancellor.

County, the same as shire; that portion of land into which the kingdom is divided.

Court, the place where Judges distribute justice, or exercise jurisdiction. Also the assembly of the Judges, Jury, &c. in the place.

Courtesy of Scotland, where a man marries an heiress infefted in Lands, and has a living child by her. If the mother and child die, he has the rents of the land during his life.

Creditor, a person to whom a sum of money is due in any way.

Crime, the transgression of a law, whether natural or positive.

Criminal

D A T

Criminal Letters, a precept from the Justiciary, containing the accusation against the person, and a command to summon him to stand trial.

Croft, a little close or inclosure adjoining to a dwelling house.

Crown, an ornament worn on the head by kings and noblemen, as a mark of their dignity. Also regal power.

Culprit, a person arraigned before his Judge.

Curator, a person appointed to manage the affairs of minors, or of those who are mad, deaf or dumb.

Current rent, is where the term for which a rent is due, is begun to run.

Cursing parents, is when children, sixteen years old, imprecate evil from God to their parents. In such case they are guilty of death.

Custom, implies such usages, as tho' voluntary at first, are yet by practice become necessary. It is a law not written, opposed to written law.

D

Damage and interest, the loss sustained by a person, thro' the hurt done to his estate, and the hinderance of profit from it.

Date, a description of the day, month and year of our Lord, and sometimes of the kings reign, on which a deed is signed.

D E C

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Days of grace, those granted by the court, at the prayer of the defendant or plaintiff, in whose delay it is. Also the three days allowed for payment of a Bill of exchange, after it becomes due.

Deads part, that portion of the funds of a marriage, which upon the dissolution of it, goes to the nearest of kin of the husband or wife deceased. This is a third part in case of children, or the half, in case of none.

Dean of Guild, a Magistrate in a Royal Borough, who has the cognisance of mercantile causes, and the inspection of buildings within the borough.

Death-bed, Law of, the privilege of an heir to reduce all deeds of his predecessor, granted while on death-bed, in prejudice of the heir. And this is reckoned within sixty days of his death, if he had not afterwards gone to kirk or market.

Debita fundi, debts recoverable by an action against the debtor himself, or against his lands.

Debita fructuum, debts recoverable out of the fruits of the lands from which they are payable.

Debt, any thing due to another, as money, &c.

Debtor, the person who owes any thing to another.

Deceit, a subtle trick, or

device

device used to defraud another, which is punishable.

Decimæ incluse, lands *cum decimis inclusis*, or *tiends* included, are free from teind, ministers stipend, &c.

Decisions of Session, are the judgments of the court of session in particular cases, which have great weight in similar cases, but are not law strictly, beyond their own cases.

Declaration, Judicial, is made in a formal manner by a party before a judge.

Declaratory Action, is that by which a pursuer craves that some right or privilege shall be declared to belong to him.

Declinature of Judges, is refusing to submit to their Jurisdiction in the cause, in which it is pleaded.

Decree, an order of a superior power, for the regulation of an inferior. Also the sentence or Judgement of a court.

Decreet Arbitral, the sentence of an Arbiter, in the submission or reference of a matter to him.

Deed, any legal writing, contract, conveyance, &c.

Defamation, the speaking slanderous words of another, for which the slanderer is punishable.

Defence, a Justification or apology. The defendants answer to the plaintiffs demand.

Defendant, the person accused and summoned.

Defender, an advocate, or he that defends another.

Deforcement, opposing the officers of the law in the execution of their office.

Delegation, extinguishing an obligation on a former debtor, by another becoming bound in his place.

Delict, such an offence, or breach of the peace, as is punishable by fine and imprisonment.

Delinquent, a guilty person who has committed some offence for which he is punishable.

Delivery of writings, is the delivery of deeds to the persons in whose favour they are granted, without which they are not valid, unless they contain a clause dispensing with the non-delivery.

Dememoration, the crime of depriving one of a member of his body, or the punishment of cutting off a member of the criminal's body.

Demise, death or decease.

Denizen, an alien made a subject by the kings gift.

Denunciation, a solemn publication of a thing.

Denunciation at the Horn, is the publishing a debtor to be a Rebel, because he has not obeyed a charge of horning. On this follows a caption for taking his person, &c.

Deponent, a person who makes oath before a court.

Deposit, a thing committed to

to the custody of a person, to be safely kept and returned on demand.

Deposition, the contract of committing a deposit to the keeping of any person, for behoof of the owner who is called the depositor, and the other the depositary.

Deposition, the Testimony of a witness on oath, before a court.

Descendants, the offspring of an Ancestor, who have particular regulations as to marriage and succession.

Descent, the transmission of any thing by succession and inheritance.

Desertion, wilful; when one of the married pair leaves and forsakes the other. If this is for four years, it is a ground of divorce.

Designation, the same as addition, or the title given to a man over and above his christian name and surname.

Designation of Manſes and Glebes, the appointment of them to the parson or incumbent.

Destination, the appointment of persons or things to any particular purpose.

Deterioration, the making a thing worse.

Devolution, the falling of a right by succession into new hands.

Diet of appearance, the day to which the defendant is cited to appear in court, and every

other day on which the question is to be considered.

Diligence, the care which parties are bound to give in implementing contracts or trusts also certain forms of law whereby a creditor endeavours to operate payment from his debtor.

Diocese, a particular district under the government of a Bishop; now that district in Scotland, over which the jurisdiction of a commissary court, or Bishop's court, extends.

Discharge, an acquittance from a debt or crime.

Disclaimation, the disowning, or disclaiming of a superior by the vassal, whereby the latter lost his fee.

Discussion of debtors, the using of diligence against them for payment, by registering a Horning, and arresting, and pointing their moveables, and adjudging their lands.

Disparagement, inequality in blood, honour or dignity, in the matching of heirs in marriage.

Dispensation, the licence for doing certain actions which otherwise are not permitted.

Disposition, or Charter; the writing which contains the grant or sale and conveyance of lands; also a disposition of moveables.

Dissolution of the annexed property of the King, is the disuniting it from the crown, by act of parliament, that it may be safely sold.

Divesting, or divestiture; the sale or surrender of ones lands or effects.

Division of commouty, the dividing of land by the Court of Session, according to the valued rents of the common proprietors, or according to the interests of those concerned.

Divorce, the legal dissolution of a marriage, at the suit of the injured party, for adultery or wilful desertion.

Document, some written monument or evidence produced in proof of any thing asserted.

Dole, a malevolent intention, which is the essence of crimes.

Dome, or *doom*, a sentence judgement or decree.

Domicile, the dwelling place where a person intends to remain. It is formed by 40 days residence.

Dominion, the power to use and dispose of a thing as we please.

Dominium eminens, the power which a legislator has over private property, by which the proprietor may be compelled to sell it for an adequate price, for the public utility.

Dominium directum, the right which a superior retains in the lands, notwithstanding the feudal grant to the vassal. It is called superiority.

Dominium utile, the vassal's right or property.

Donation, a voluntary gift.

Donatary, the person to whom the king bestows his right to any forfeiture fallen to the Crown.

Donor, the person who gives a gift.

Donee, the person who receives a gift.

Dos, or *dote*, is a marriage gift or tocher good.

Dowager, a widow endowed, a title applied to the widows of Princes, Dukes, Earls and persons of rank.

Dovecote, a pigeon house, from which, and the precincts thereof, if the pigeons stray into the skaith of other people, they may be shot or poynded.

Dower, that portion which is allowed a widow out of the lands of her husband, after his death.

Dowry, the money, or fortune which the wife brings her husband in marriage.

Drawn-tiend, the tenth part of the corns after reaping, which were taken by the parson on the field.

Duelling, the crime of fighting in single combat, on previous challenges given and received. This is punishable by death.

Duke, a title of dignity, created by patent, &c. His rank is next below the sovereign, and he is called, grace.

Duplicate, a copy of any deed, writing or account.

Dureffe, where a person is imprisoned contrary to law, or

is threatned with violence, till he executed a writing.

Dutchy, the dominions of a Duke.

Dyvvour or Bairman, a person insolvent, who gives over all his substance to his creditors.

Dyvvour's habit, a party coloured habit, which fraudulent Bankrupts are appointed to wear.

E

Earl, a title of dignity next below a Marquis, and above a Viscount; created by cincture of sword, mantle of state, cap and coronet, and a charter.

Earldom, the Lordship or territory of an Earl.

Earnest or Arles, money sometimes given by the buyer, in evidence that the bargain is made.

Easement, a privilege of convenience, which one neighbour has of another, without profit, as, a way thro' his lands, a sink, or the like.

Edict, a proclamation of command or prohibition by a Prince to his subjects. Also a precept by a judge, to be served on all concerned, in certain matters.

Effects, the goods, or moveables possessed by any person.

Egyptians, forners called gypsies, who were banished by act of Parliament.

Ejection, the throwing of goods overboard in a storm; also turning out the possessor of

an heritable subject, by force, in lawful form.

Eik, an addition made to something, which has gone before. As an eik to a reversion, to an inventory in a confirmation of an executor, &c.

Elopement, where a married woman departs from her husband, and co-habits with another man.

Emancipation, the setting a son free from the subjection or management of his father.

Emergent, matters newly come to knowledge, which may be pleaded against a decree.

Endowment, the settling a dower on a woman, or a provision on a parson.

Entry of an heir, that form by which an heir vests himself with a title to his predecessor's Estate.

Envoy, a person deputed to negotiate an affair with a foreign prince or state. The same as ambassador, only he receives less ceremony.

Equity, natural justice, or to do to another, what one would wish to be done to himself. Also a mode of proceeding in Courts, whereby the rigour of law is abated, and aid given in proper cases.

Erection of lands into a Barony, is giving them the legal privileges of a Barony.

Escape of prisoners, is when they break prison and flee from Justice.

Escheat, the fall and forfeiture

ture of lands and goods to the King, &c.

Escheat, single, was the forfeiture of a debtors moveables to the crown for not obeying a charge of horning for civil debt.

Escheat, liferent, was the forfeiture of the debtors rents to his superiors, if he continued a year and day under denunciation for civil debt.

Both these are now done away.

Escheator, an officer who observes the escheats of the King.

Espousals, a promise or contract of a man and woman to marry each other.

Estate, the right, title, and interest that a person has in lands, tenements and effects.

Estates, the lords and commons in Parliament.

Estray, any beast not wild which is found, and owned by nobody.

Evesdroppers, are those who stand under the Eves or windows of a house, to listen and carry news, and raise strife in the neighbourhood. They are punishable.

Eviction, a recovery of lands or tenements by law.

Evidence, any legal proof, to make the point in issue evident to a Judge or Jury.

Excambion, is the exchange of one piece of ground with another.

Exception, or defence, is an objection, or a stop to an ac-

tion at law: exceptions are either dilatory or peremptory; under the first are exceptions to the competency of the court, and against the Judge himself. Against the form of citation, the pursuers title, and the form of the action. Against proceeding, because all parties having interest are not called. And personal exceptions to the defendant that he does not represent the original debtor. A peremptory exception or defence, is such as the decision thereof shall put an end to the cause.

Exchequer, the court for judging and receiving the Kings revenue, debts or duties, lands and hereditaments, or other profits, benefits and casualties belonging to the King. They Judge by the forms of proceeding used in England. The court consists of the Lord High Treasurer of Great Britain, a chief Baron and four other Barons, &c.

Excommunication, an ecclesiastical censure, whereby persons are separated from the communion of the church, civil Magistrates are not to be assistant in order to it, or other church censures.

Exculpation, *Letters of*, a writ for citing witnesses on the part of the accused, to prove his defence, or his objections, &c.

Execution, the act of accomplishing or finishing diligence in

in any thing concerning persons and substance,

Executor, the person named by testament, or appointed by law, to succeed to the moveable estate of one deceased.

Executry, the moveable estate falling to the executor.

Exemption, a privilege to be free from same service or appearance.

Exercitor, he who employs a ship in trade.

Exhibition of writings, the producing them by the havers or possessors on a summons for that purpose. They must either produce, or depose in a certain form.

Exitus terra, the profit of land.

Exoneration, the disburdening and discharging an executor, tutor or curator, factor, or the like, of their accounts and offices.

Expiration, the lapse of time allowed by law, in certain cases; as the expiration of the legal, in an adjudication, &c.

Expromissor, one that undertakes an obligation in place of the debtor.

Ex Officio, the power a person has by virtue of his office, to do certain acts without being applied to.

Extent of Lands, old and new, is a valuation of all the lands in Scotland, for proportioning the public subsidies, and ascertaining the rates of feudal casualties. And a lat-

er valuation for the same purpose.

Extortion, wresting anything from a man by force, threat, or authority. It is punishable.

Extrinsic Quality, in an oath of a party, is that which the judge rejects, or separates from the oath, as not belonging to it, or not falling within the other party's reference.

Extrajudicial, is a thing done out of court.

F

Facility of temper, an easiness of temper in one, which makes him subject to imposition, and therefore an object fit for interdiction.

Faction, a cabal or party formed in a state, city or company.

Factor, he that does business for another by special commission.

Faculty, a privilege granted to a person by favour and indulgence, of doing what by law he ought not to do.

Fair, a greater kind of market kept once or but a few times in a year, with certain privileges.

Falseness, the fraudulent imitation or suppression of truth, to the damage of another, in weights and measures, writings, &c.

Falsing of dooms, reduction of decreets.

Family, the persons who live together in one house, under the

the direction of one head, or chief manager. The husband has the sole direction and administration of every thing; of all his wife's moveables, and rents of lands; and she can do nothing without him. He has the care and administration of his children and their affairs, till they be 21 years old, or till the daughters be sooner married, &c.

Farandman, or foreigner, on business here, should have his law suits speedily ended.

Farding deal, the fourth part of an acre of land.

Father, a well known term, is the head of his family, has power over his children, &c.

Fault, a failure in care and diligence on any matter. A great failure, neglect, or fault is equivalent to fraud.

Fear, such an impression on the mind of violence done, or to be done to ones person or estate, as compells him to grant a deed, which, otherwise, he would not have done.

Fee or fief, or feud, signifies a complete property in lands, and other heritable subjects. Also servants wages are called fee.

Felo de se, a person who deliberately kills himself.

Felon, a person guilty of felony.

Felony, a capital crime, next to petit treason, committed with an evil intention.

Feeffment or infeftment, or

investiture, is a grant of lands, tenements, &c. to another in fee, by delivery of seisin, or possession.

Feu, the same as fee.

Feu-duty, the yearly rent reserved by the superior, in his charter to the vassal. They are preferable debts, and do not prescribe.

Feu-farm, or Feu-holding, that tenure by which a vassal is bound to pay a yearly rent or duty to his superior.

Feuel, feal and divot, are servitudes, or services due by one estate or tenement, called the servient to another, called the dominant; the extent of which is known sometimes by writing, sometimes by possession.

Fiar, the person vested in the feudal property of a subject.

Fiars of the year, the prices that grains shall be holden as estimated at, when there is a failure in delivery, they are ascertained by the sheriff of each county.

Fiat, a short order, or warrant by a Judge for allowing and making out certain things.

Fictio Juris, a fiction of law by which a supposition is made in law for a good reason, against the real truth of a fact in a matter possible to have been actually performed according to the supposition.

Filiation, sonship, or the state of lawful children, it is inferred by the marriage of the parents.

F O R

Fine, an amends by way of punishment for an offence committed.

Fire, the burning of an house, &c. It is presumed to be accidental, and not the fault of the possessors.

Firiot, a dry measure, of two farts. The wheat firiot contains 2197. 34 cubic inches. The barley firiot 3205. 54 cubic inches.

Fisc, the treasury of the Prince.

Fiscal, *Procurator*, the Advocate or Procurator before an inferior court who prosecutes in behalf of the public.

Fishing; the right of Fishing, competent to the proprietor of ground. The general mention of fishings, and 40 years possession carries salmon fishing as well as others.

Flight, a person accused and flying from justice, is holden as guilty.

Force and fear, any unlawful violence offered to persons. They are grounds for reducing deeds thereby obtained.

Foreign Deeds, of personal obligation and for moveables according to the law of the foreign place, are effectual in Scotland but not those for herirage, unless they are perfected according to the law of Scotland.

Forest, a certain territory privileged for wild beasts, or game, &c. under protection of the King.

F U N xxiii

Forestalling, the buying or bargaining for any merchandise, when coming to fairs or markets to be sold, with intent to sell the same again at a higher price, which is punishable.

Forethought felony, signifies premeditated murder.

Forfeiture, the effect of transgressing a penal law, by which lands or goods are forfeited and lost.

Forgery, is where a person fraudulently makes and publishes false writings to another's prejudice.

Foris familiarion, a child renouncing his legal title to any farther share of his father's succession, upon receiving a portion.

Form, the rules established to be observed in legal proceedings before courts or otherwise. They should be few, short and plain, and never interfere with justice or dispatch.

Forthcoming, *Process of*, is an action of a creditor against his debtor and the debtor's debtor, to recover payment on an arrestment in the hands of the latter.

Fraud, Deceit in grants of lands, or in bargains of goods, &c. to the damage of another person. Which is totally prohibited.

Fugitive, a person obliged to flee his country, or abode, for crimes, debts, &c.

Fungibles, such things as are estimated

estimated by number, weight or measure.

G

Game, birds or prey taken or killed by fowling or hunting, concerning which, there are divers regulations.

Games of hazard, as cards, dice, &c. Money won at those, beyond £10, at one down-sitting, is to be restored, and the winner liable to five times more, &c.

Gaol, a prison or place of legal confinement.

Gaol delivery, a commission by the King to certain persons, to deliver his gaol at such a place, of the prisoners contained therein. Used in England.

General discharge, an acquittal of all that the granter can demand. This extends not to debts of an uncommon kind.

Gestio pro herede, is behaving himself as an heir to his ancestor, by intermeddling with his estate, his title deeds, conveying his subject, &c.

Girth and Sanctuary, the privilege of retiring to a legal place of safety against captious for debt. The palace of Holy rood-house is the only sanctuary in Scotland.

Glebe, the land belonging to a parish church, beside the tithes, or fifth part of the rents.

Government, the polity of a state or nation; or an orderly

power constituted for the public good.

Grace, act of, a name given to the act of Parliament 1696, C. 32, concerning the alimention of poor prisoners for debt, or setting them at liberty.

Grace, days of, three days after the term of payment of a bill, allowed to the debtor to pay it.

Grant, a conveyance in writing of such things as cannot pass by word only.

Grass of Ministers, the grass allowed for a horse and two cows, to ministers, beside their glebes.

Gratuitous cause of a deed, is when it granted for love and favour only, without money, &c.

Groundannual, is a yearly duty payable for the ground of a tenement or house within Burgh.

Guardian, a person who has the charge of any thing, particularly of children and idiots.

Guild, a fraternity or company, in Royal Boroughs, with laws and orders for their good government, &c.

Guild Dean of, a Magistrate who is head Deacon, or Dean of the merchant company, or Guild in Royal Boroughs, he has the inspection of buildings and the cognizance of mercantile courts, &c.

H

Habite and repute, held and reputed to be a wife, an heir, &c.

Haimfucken

Haimfucken, is the assaulting or beating a person in his own house. A capital crime.

Harmless and skaitblefs, in law-boroughs, is not to hurt or endanger those, toward whom one is bound to keep the public peace.

Hasp and staple, the entry of an heir by a bailie in a Royal Borough, by giving him the hasp and staple of the door of a burgal tenement.

Hazard or accident, in a sale, belongs to the buyer, after the contract is perfected.

Head-Borough, diligences, in certain cases must be published and registered at the head Borough of the shire.

Heir, a term applicable to all those who are entitled by law to take the right and possession of any heritable subject which belonged to a person deceased.

Heir apparent, is he who is entitled to succeed, after the ancestors death, before his entry.

Heir presumptive, is he so called during his ancestors life.

Heir of conquest, is he among brothers or uncles, who succeeds to the heritable subjects purchased by his ancestor.

Heir of line, or heir at law, is he who succeeds to his ancestor in a descending universal manner.

Heirs portioners, are daughters or sisters, who succeed e-

qually to the deceased, with a precipuum to the eldest.

Heir of provision, is he who succeeds by special destination or provision.

Heir of tailie, is he who succeeds in a long series of heirs, substituted by deed, one after another.

Heirship moveables, are the best of certain kinds of moveables, which the heir of line is entitled to take, beside the heritable estate.

Hereditary, whatever belongs to a person or family, by right of succession.

Hereditas jacens, an estate lying after the proprietors death, till his heir enter upon it.

Herezeld, or Heriot, is the best horse, ox or cow which a tenant had at his death. It is a pertinent of the fee.

Heritable Rights, all rights affecting lands, mills or other immoveable subjects.

Heritage, Lands, mills or other immoveable or heritable subjects. It cannot be settled by testament, and it descends, but conquest ascends among collateral heirs.

Heritor, the proprietor of land, or other heritable subjects in the country.

Hide of land, such a quantity as might be plowed with one plough within a year or so much as would maintain a family.

Highway, a free passage for the kings subjects, with carri-

ages, horses &c. from one place to another, with divers privileges.

Holding, the tenure by which a proprietor of land holds it of his superior.

Holograph, any deed wholly written by the hand of the granter.

Homage or fealty, the submission and service which a tenant promised to his lord, when he was admitted to the land.

Homicide, taking away the life of any person.

Homologation, the approving and ratifying any prior contract or obligation.

Horning, a writ at the instance of a creditor, commanding his debtor to pay or perform within a certain time, under the pain of being denounced a rebel, &c.

Hostage, a person given up to an enemy, as a security for the performance of the articles of a treaty.

Houserents, the mails or duties payable yearly for the possession of houses. They prescribe from year to year, in three years.

Hue and cry, is the pursuit of a person who has committed felony on the highway.

Hunting, fowling, and fishing, the right of, is restricted and regulated by law.

Husband, a man joined with a woman in marriage, he has power over his wife's person and effects, and he is curator to

her, &c. she can do nothing without his consent.

Husband land, is twenty six acres of arable land, or thereby.

Hypothec, a right of security to creditors upon the effects of their debtors, for payment of certain debts; such as rents, the freight of a ship, seamen's wages, ministers stipends, &c.

I

Idiot, a person born a natural fool. He cannot contract nor make a will, and he gets a tutor appointed by a brieve and service, for the management of his person and estate.

Jedge and Warrant, the order of the dean of guild court for building or demolishing houses within a borough.

Jest, a thing spoken in merriment, without intention of being real. What is jestingly said, infers no obligation.

Ignorance, of the law of nature, or of the civil law founded thereon excuses nobody, especially in statute and criminal law.

Immunity, a privilege or exemption from some office, duty, &c. also the liberties granted to cities and communities.

Impannelling, the writing down the names of a jury, summoned by the sheriff, &c.

Impeachment, an accusation and prosecution for treason and other crimes.

Imperial, something belonging to an emperor, or independent

ent Monarch, as the imperial crown of Britain, &c.

Implead, to sue or prosecute by due course of law.

Implication, where something is implied, which is not expressed by parties, in deeds, &c.

Importance, deeds of, are those which have their subject above £8. 6. 8. in value. If the granter cannot write, two notaries must sign for him.

Impost, a tribute or custom, or the tax which is laid on goods imported.

Imprisonment, the state of a person legally restrained of his liberty, and in the custody of another, either for debt, or a crime. Wrongous imprisonment is prohibited under severe penalties.

Improbation of writings, is the annulling them before a court, as false and forged.

Incest, the crime of venereal commerce between relations who are prohibited from marriage by law.

Incident diligence, a warrant from a court for citing witnesses, producing writings, &c. for proof.

Inclosures of Land, it is allowed for them to turn about the high-way, 200 ells, on making the new road passable.

Incompetency, the want of power or authority in a Judge to determine a cause.

Inconsistency in writings, is regulated by the posterior clause

or writing, this being understood to rectify and derogate from the prior.

Incorporation, the same as corporation, which see.

Incorporeal things, are not subject to the senses, but have existence in law, as rights of all kinds.

Inculcata tutela, self-defence which is lawful and a duty.

Incumbent, a minister of a parish resident on his benefice, so called, because he ought to bend his whole study in discharge of his duty.

Indebti solutio, the erroneous payment of what is not due, which founds the payer in an action for restitution.

Indemnity, the keeping harmless; or a writing to secure one from damage and danger.

Indictment, a summons or libel against criminals.

Indivisible, the partial interest of a pursuer, with others, in a subject who do not concur with him, and therefore he cannot warn a tenant, or prosecute a removing from the subject, &c.

Indorsation of bills of exchange, is assigning them on the back, and is in effect a new bill.

Induciae, the days allowed to a defendant between his citation and appearance in court.

Induction, the putting a clergyman into possession of a benefice, to which he is presented.

Infamy, a crime by which

one is rendered infamous, and incapable to be a witness or juror.

Infang theft, and Outfang. The former is when thieves are taken with the things stolen; the latter, when they are taken without having the thing in hand.

Infant, a person within seven years of age.

Infesment or legal possession of lands, consists of an instrument of seisin, and its warrant.

Information, a formal declaration or suit against one.

Ingratitude, unthankfulness or injurious behaviour by the receiver of a gratuitous deed to the donor, or granter, whereby the gift may be revoked.

Inheritance, a perpetual right or interest in lands.

Inhibition, a writ at the instance of a creditor, prohibiting his debtor from selling his lands, or contracting debt on them, to the creditors hurt.

Initialia testimonii, the preliminaries of a deposition, shewing whether the witness is married, and his age, &c.

Injury, any wrong done to a man's person, reputation or goods.

Inn-keepers, who keep lodgings and provisions for entertainment of travellers, are obliged to restore what is received by them from travellers, to keep.

Innovation, is where a new obligation comes in place of a former one.

Inquest, fifteen jurors for the trial of causes.

Insolvent, a person unable to pay his debts.

Instance, the prosecution of a law suit.

Institors, they who are set over any undertaking, or branch of trade, &c. Their contracts bind their employers.

Institute of law, a book containing the elements of law.

Institution, the first of a series of persons who are appointed by a deed to the succession of an estate. The rest are called substitutes.

Institution of ministers, the same as collation of old, or bestowing the benefice on them, of which they got possession by induction.

Instrument, a public act or authentic deed, by which any truth is made apparent, or any right or title established in a court of justice.

Instrument notarial, a writing under the hand of a public notary, certifying a fact.

Insufficiency Latent, of goods sold, subjects the seller to take them back, or make up the damage.

Insurance, a contract whereby persons called insurers or assurers, oblige themselves to answer for the loss of a ship, house, goods, &c. in consideration of a premium paid by the proprietors of the things insured.

Interdict of a court, an order to prohibit a person from going on in the matter complained of,

of, till the merits of the affair be tried.

Interdiction, a legal restraint laid upon weak or profuse persons, from signing any deed to their own prejudice, without the consent of curators.

Interest, the premium paid for the loan or use of money. Also advantage, and a concern or participation in any thing.

Interest in a cause, infers disability in the Judge or witness to act.

Interlocutor, or Interlocutory, order of a Judge, the judgment or sentence of a court before the final sentence.

Interpretation of laws, and of writings, the giving the sound sense of them, according to the words, the received rational usage, and the public intendment of such things.

Interrogatories, questions demanded of witnesses in a cause. They should relate only to the necessary point, and not be calculated to lead a person in what he has to say, by putting words as it were into his mouth, as, *did you not see a thing done?* They ought not to lean to one side more than to another, and therefore should be expressed in this manner, *did you see, or not see a thing done?* After a party has deposed to a general interrogatory, no special one that might infer a contradiction in the oath, is allowed. And parties are bound to confess or deny points put to them judicially.

Interruption, a stop or hindrance of any thing, by a notarial instrument, or by a summons, &c.

Intestate, a person who dies without making a will.

Intimation, legal notice of any thing given to those concerned, as of an assignation of a debt to the assignee, &c.

Intromission, the intermeddling with any thing.

Intrusion, entering into the void possession of a heritable subject, without a title or warrant.

Inveſta et illata, into a house, furniture and other things brought into a house, which are subject to the hypothec rent.

Inveſta et illata, within a thirl, the corns brought by the inhabitants of a borough within the thirl or territory of its mill.

Inventory, a list or catalogue of the moveables which an executor gives in to court as belonging to the deceased, or it is a catalogue of the lands, &c. given in by an heir as belonging to his ancestor, upon which he is to enter.

Investiture, the writings which constitute a feudal right, or the legal possession of lands.

Jointure, the estate settled on a wife, to be enjoyed after her husband's decease.

Irritancy, a clause in a deed providing a certain thing, and declaring the nonfulfilment thereof, to make the deed void and null.

Ish, the expiration of a lease or the passage or egress from a place.

Judge, a chief magistrate appointed to hear causes impartially, fully and speedily; to receive facts as alledged and proved, to apply the laws, and to pass sentence.

Judgment, the sentence of a Judge upon a suit.

Jurisdiction, the power and authority of a Judge, and the district to which the authority extends.

Jurisprudence, the science of law.

Juror, one that serves on a jury.

Jury, a company of 15 men, sworn to try a fact before a court. They are only 12 before the exchequer.

Jus deliberandi, the right of an heir, to deliberate for a year, whether he will represent his predecessor, or not.

Jus devolutum, the right of the church, or presbytery to present a minister to a vacant parish, when the patron neglects to use that right within half a year.

Jus mariti, the right of a husband to his wife's moveable estate by their marriage, and to the rent of her lands, &c.

Jus relicta, the right of a wife to a part of the goods in communion of marriage, in case of the husband dying before her.

Jus preventionis, the preferable right of a court to judge in a cause before another court,

by having exercised the first act of jurisdiction.

Jus superveniens auctori accersit successori, a right supervening to the author accrues to his successor. As the heir apparent, before his entry sells the estate, and afterwards makes up his title. The estate and title then become effectual to the purchaser.

Justice, the inclination of the mind, and habit in action to give every man his own.

Justice, a person deputed by the King to administer justice to his subjects.

Justice of Peace, a person appointed by the King to attend the peace of the country where he lives. They judge in breaches of the public peace, and in most of the laws concerning public police; also in servants wages.

Justiciary, court of, is the supreme court for criminal jurisdiction and causes in Scotland. It consists of the Justice General, Justice Clerk, and five Commissioners of Justiciary, &c.

K

Katharins, were forners, or masterful, sturdy beggars, who went in companies and oppressed the people. There are several laws against them.

Kenning a widow to her terce, is serving the widow on the brief of terce, to the liferent of the third part of the lands in which her husband died infest.

Keys,

L A T

Keys, the Kings, is the authority which the possessor of a caption has thereby to break open doors, in order to get at the person.

Keys, delivery of, imports possession of the place and goods therein.

King, the personage who has the supreme authority, and the executive power of the state.

King's Ease, the fifth part of the true rent of an heritors tithe, allowed to him where the stock and tithe are set for distinct duties.

Knaveſhip, lock and bannock, names of the small duties payable to millers servants at grinding corns.

Knightbood, the first rank or class of dignity and honour, above that of gentleman.

Knights of the Shire, are the commissioners for the shires to serve in Parliament.

L

Lammas, a term on the first day of August.

Last, the burden or load of a ship. Also certain measures of fish and other things.

Last heir, he to whom lands or goods come by escheat, for want of lawful heirs. This is in general the King.

Latent-right, such a deed as lies concealed and not published. This among conjunct persons, has no effect against creditors.

L E G xxxi

Lavish person, is he who is such a spendthrift as cannot manage his own affairs without a curator.

Law, the command of a legislator, to do, or not to do a thing under a penalty.

Lawboroughs, is the surety which one is bound for to his neighbour, to keep the peace, and refrain from harm.

Lawyer, one skilled in the law, and authorised to practise as an advocate before a court.

Lease, or Tack, is a contract between the proprietor of lands or houses, and a tenant, for the use of the lands, &c. for a rent or Tack duty.

Legacy, a donation or gift by one person to another, to be paid after the granters death.

Legal reversion, the time in which lands that are adjudged may be redeemed. See adjudication.

Legatee, the person to whom a legacy is provided.

Legislator, a lawgiver, who establishes the laws and polity of a state. This in Britain, is the King, Lords, and Commons.

Legitimacy of Children, is presumed from the marriage of their mother with a husband.

Legitimation, children born before the marriage of their parents, are legitimated, or made lawful by the subsequent marriage of the father and mother.

Legitimation

Legitimation of Bastards, is made by letters from the king.

Legitime, is the bairns part of gear, before explained.

Le roy le veut, the king's assent to public bills or acts of parliament. This manner in French is a badge of antient slavery.

Let, Lands to, to put them to hire, or grant them to a tenant for rent.

Letter of Attorney, a writing in the English form, by which one person authorises another to do some lawful act.

Letter of Credit, an order by one person to another to furnish a third person with goods or money.

Letters, are writs or diligences in the King's name.

Letters missive, are letters granted or sent by one merchant to another, in a mercantile affair. They are probative and binding, and they prescribe in 20 years.

Letters patent, writings sealed with the great seal, and open, authorising a man to do or enjoy, what of himself he could not do.

Levy, to gather or collect money, &c.

Libel, the declaration or charge in writing, against a person in court.

Liberation, from obligations, is either by consent of parties, or by performance.

Liberty, the power of living without any restraint but what

the law prescribes. Also a privilege held by charter or prescription.

Licence, an authority given to a person to do some lawful act.

Liege phisic, or state of health, is opposed to death-bed, in making deeds.

Lieges, the subjects so called.

Life, persons are presumed to live till they be 100 years old, unless they be proved dead before that time.

Liferent, is the use of any subject given to a person during his life. It is a servitude or burden on lands or houses.

Liferent escheat, see escheat.

Limitation of Actions, the same as prescription.

Liquid, what is clear and fixed.

Lis alibi pendens, a lawsuit depending before another court.

Litigious, that which is in contest before a court.

Liticontestation, is an interlocutor of court, admitting the libel or defences to proof.

Loan, any thing lent, in order to be returned.

Local, something fixed to a certain place.

Locality, decree of, a decree proportioning a minister's stipend among those liable in payment.

Location-conduction, the same as, letting to hire.

Locus penitentia, the place or power of resiling in contracts. There is no place for it in liberatory pactions.

Loosing arrestment. When an arrestment proceeds on a depending action, it may be loosed by the arrestee giving security for the debt, if it be found due.

Lord, a title of honour given to those who are noble by birth or creation. It is next below a Viscount. Also a title of office, as, Lords of Session, Lords of Justiciary, &c.

Lucrative cause, is when any thing is granted for love and favour, without money or price.

Lucrative successor, is the apparent heirs accepting a gratuitous right from the ancestor to the estate, to which he may succeed as heir. It makes him liable for the ancestors debts.

Lunatic, is a madman who has lucid intervals. He cannot grant deeds without a tutor.

Lyon, Lord, is the King of or at arms; because he has the sole power and jurisdiction concerning coats of arms, or signs armorial. He admits and deprives messengers at arms, &c.

M

Mace, an ensign of authority carried before magistrates, as before the lords of session and justiciary.

Macers, the macebearers before those courts.

Magistrate, a public officer, to whom the execution of the law is committed, according

to the extent of his commission.

Magnacharta, the great charter of the libertys of Britain, and the basis of our laws and privileges.

Maiden, an ancient instrument used in Scotland for beheading criminals.

Mails and duties, are the rents and profits of lands and houses. The rents of lands prescribe, or are lost in 5 years, and the rents of houses in three years after the tenants removal.

Mains, the house and lands, which are possessed by the laird or superior.

Majesty, the title given to the king, as a term of distinction and power.

Mala fides, an ill conscience or dishonesty in any thing.

Male appretiated, wrong appraised, is said of those things that are undervalued or estimated by an executor.

Malice, ill will, or bad design, infers an exception against a witness, &c.

Malversation, in office, an evil practice, or bad shifts. It is always a good ground for deprivation.

Mandate; a judicial commandment to do some thing; or a power granted by one to another to do business for him.

Manor or Barony, which consists of government, demesnes, services, court-baron, &c.

Manse of ministers, their house

and offices furnished by the heritors, at half an acre of ground with the yards.

Marches, and march dikes, the lines and fences of division between lands, &c. They may be streighted, and for them, the highway may be cast about 200 ells. The neighbouring heritors are bound to be at equal charges in making new march dikes, &c.

Marcheta mulierum, the marchets of women on being married, were dues payable by vassals to the superior on the marriage of their daughters.

Marginal notes, or additions to a deed, ought to be mentioned in the writing, and signed as it is.

Marriage, the lawful union of a man and woman during their lives and fidelity. It cannot be dissolved by mutual consent, and it is the foundation of the human race, of families and states.

Masters of ships, have the charge of the ship, and power to contract for the freight, repairs, provisions, &c. so as to bind their employers.

Memory, before the time of memory and since, laws since James the I, may be deemed since the time of memory, and those prior to that period, before the time of memory.

Messengers at arms, officers under the Lyon King of arms, who execute the Kings writs in civil and criminal cases.

Messuage, the principal dwelling house, and ground adjacent for household uses.

Michaelmas, a term on 29 September.

Mill, is a separate tenement, and not conveyed in a deed, without special mention of it, unless the lands be in a barony.

Mines of Gold and Silver, are deemed to be reserved by the crown as regalia, unless they be specially conveyed.

Minister of state, a person to whom the King intrusts the administration of his government. Their neglect cannot prejudice his majesty's interest.

Minor, a person above fourteen years old, if a male, and twelve, if a female; but under twenty one years, or majority.

Misdemeanour, a heinous offence, particularly in the execution of an office.

Misnomer, a misnaming or mistaking a persons name which is fatal to several things.

Misprision, a neglect or oversight concerning treason or felony.

Missive Letters, vide *Letter missive*. Those delivered or sent.

Misuser, some abuse of any particular liberty or benefit.

Mittimus, a warrant of commitment to prison.

Modification, the softening or moderating any penalty or punishment.

Modification of stipends, the fixing

fixing of the amount of them out of the teinds of the parish in general.

Molestation, action of, a process competent to the proprietor of a land-estate, against those who disturb his possession. To be carried on before the judge ordinary.

Monopoly, one or more persons making themselves sole masters of the whole of a commodity in order to sell it at a very advanced price.

Mora or delay, is the debtors not performing in the time or manner agreed, or determined by law; or the creditors not accepting performance duly tendered. It has divers consequences.

Mores or manners, all agreements or obligations *contra bonos mores*, are void.

Mortancestry, Brief of, was antiently the ground of an action by an heir when excluded from his ancestor's estate.

Mortgage, a pledge of lands, &c. for money borrowed, so as if the money be not paid at the day, the land dies to the debtor, and is forfeited to the creditor.

Mortification, or mortmain, the granting of lands, or other feudal subjects, to churches, or religious societies, *ad manum mortuam*. Lands may be so granted to any lawful purpose, either by blanch or feu-holding.

Moveables, such things as

move themselves, or can be moved, in contra-distinction to heritable or immoveable subjects.

Multiplepoinding, an action by which a person who is troubled by several others pretending right to a subject in his custody, calls them all to try their rights, that he may pay safely to him that has the best right, and is preferred.

Multure, is the quantity of corn payable to the heritor of a mill for grinding. They prescribe in five years.

Murder, the wilful and felonious killing a person from premeditated malice.

Mutilation, cutting away a member of the body.

Mutuum, a loan of money or other things.

N

Nature, law of; that law written in the heart of every man and woman by their creator.

Naturalization, the naturalizing an Alien, or placing him in the condition of a natural born subject.

Negative, parties answering negatively to a general question are not thereafter bound to answer special interrogatories.

Negotiorum gestio, the manager of a persons affairs in his absence, without a mandate.

New facts, come to knowledge, may be insisted on in a process, after a decree.

Newters, the goods and ships of newters assisting our enemies, become lawful prize.

Nobile officium of a Judge, particularly of the court of session, is the high power by which they interpose, in some cases of necessity and utility, to supply the defect of ordinary law and form.

Nobility, signifies rank or dignity above the commons. It is extended in Britain to five degrees; Duke, Marquis, Earl, Viscount, Baron.

Nonage, all the time a person continues under the age of 21.

Nonentry, the heir neglecting to enter and renew the investiture of the feudal subject which belonged to his ancestor. Burgage lands, or lands belonging to corporations cannot fall into nonentry.

Notary-public, he who is authorised to attest deeds in order to make them authentic, protest bills, &c.

Notarial, some thing belonging to, or taken by a notary.

Notice, formal information given in negotiating bills of exchange, &c.

Notoriety, that which is publicly known, and held to be true in taking proof of anything.

Novalia, new improved lands, they are sometimes freed from tithes.

Novation, the same as innovation.

Novodamus, Charter, or Clause of, is that by which

the superior grants of new, *de novo*, certain subjects. Such charters have the effect of an original grant.

Nulla sasina, nulla terra, no property in lands, without legal delivery and possession.

Nullity in deeds, &c. anything, superfluous or deficient, which makes them null and void.

Nunc valent, in a retour of a special service, is the character of the new extent, or valuation of lands.

Nuncupative Testaments or Legacys, those made by word only, they are not good beyond £ 8. 6. 8.

O

Oath, a solemn affirmation, calling God to witness the truth of any thing.

Oath of Verity, is that whereby the truth of the fact is referred to oath by a party.

Oath of Credulity, that when witnesses give their opinion concerning the value of things.

Oath of Calumny is when a party gets the others oath whether he has reason to deny a point, or to affirm it.

Obedience, to the order of superiors excuses in trespasses, but not flagitious crimes.

Objection, something urged to overthrow a position.

Obligation, a legal tie, by which one is bound to pay or perform something to another.

Obreption, expressing what is false, in order to obtain a gift.

Occupation,

O U T

Occupation, or occupancy, the first seizure or possession of a thing. Occupation, is also a trade or mystery.

Offence, an act against the law, or omission where the law requires a thing to be done.

Offer, a proposal to a party, which is not binding till it be accepted.

Official, done in the course of office.

Office, Public, is a mandate, and does not imply a power of deputation, unless it be granted expressly.

Oleron, Sea Laws of, laws relating to maritime affairs, made by Richard I. when he was at Oleron.

Option, choice, or election. When a party makes his election, he cannot afterwards alter.

Order, is a mandate or command. Also a method or rule.

Ordinary, Lord, in the court of session, is he who comes to the outer-house to try causes.

Ordinary, Judge, is the sheriff of a county, or magistrates of a borough.

Overlord, is a superior of lands.

Overfman, an umpire, or person named by parties or arbiters, to determine a matter.

Out-law, one deprived of the benefit of the law, and of the king's protection.

Outsucken multure, is the meal or dues paid at a mill,

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for grinding, by those not afflicted.

Oyes, or Oyez, is a public proclamation at market crosses, and other places in using forms of law, calling the people to hear.

P

Paction, is a promise or contract. Pactions of parties cannot derogate from the public law.

Pactum de quota litis, an agreement whereby advocates are to have a share of the profit of a depending plea. This is null and dishonourable.

Pactum legis commissoriae, in case of a pledge for money, whereby it is agreed, if the money be not paid at the term, the pledge shall be the creditors. This is disallowed by law.

Pandeets, the first part of the code of civil law.

Pannal, the place where a prisoner is put in a court to be tried.

Pannel, the person who is put into the pannal.

Paraphernalia, a Wif's, her wearing apparel, and ornaments, &c. They are not subject to the husband's *jus mariti*.

Pardon, the King's, in case of crimes, does not prejudice another, nor restore blood.

Parents, bonds of provision by them to their children are good without delivery. Parents and children are not competent

competent witnesses for, or against each other.

Parish, the precinct of a parochial church, or a circuit of ground inhabited by people belonging to one church. The heritors of a parish, are a corporation on rating themselves for the repairs of church and manse, and maintenance of the poor.

Parliament, the grand assembly of the King, Lords, and Commons, for enacting and repealing laws, &c.

Parricide, the murder of a parent.

Parson, a rector, or minister of a parish.

Parts, and Pertinents, every thing allowed by law as part of, and passing with an estate.

Passes, permission given by those having authority to soldiers in a journey, or to shipmasters in a voyage, to go or come any where.

Passengers, in ships as to their persons, are not subject to contribution, to make up the loss of goods thrown over to lighten the ship.

Passing from writings which are pursued to be disproved, does not exempt the defendant from punishment if he be guilty.

Passive titles, are those by which the apparent heir of a person, may be liable before his entry, to pay his predecessor's debt, by being charged to enter, and not renouncing;

by behaving as heir in intermeddling with the estate, or writings; and by taking a conveyance of the estate, after debt is contracted. Also the nearest of kin may be liable by intermeddling with the moveables.

Pasturage, a right to feed cattle on another's ground. It implies fewel, fail, and divot, but may be separated from it.

Patent doors, Letters of, is a writ for making open doors to get at the effects in cases of poinding.

Paternity, the quality of a father, it is established by the birth of the child after the 6th month from the marriage; or within the 10th month after the husband's death.

Patronage of churches, the right to present a minister to a vacant church and benefice, within six months after his knowledge of the vacancy, &c.

Penalty, in obligations for money, is always limited to the expenses laid out in recovering the debt.

Penal action, that process which is to recover damages and penalties, &c. as the effect of transgression. It dies with the delinquents, unless it is litiscontested in his life time.

Pension, a sum of money paid yearly for past services. It is not arrestable by creditors.

Perambulation of marches, an action on a brief, before the

sheriff,

sheriff, for settling contentious marches.

Peremptory diets of court, the days on which the summonses, &c. must be called, and proceeded in. The diets of all courts ought in justice to be kept and peremptory, without unnecessary and frivolous continuations.

Perjury, the crime of swearing falsely, when under a lawful oath, before a court. Its punishment is loss of moveables, imprisonment and infamy.

Persona standi in Judicio, a capacity to stand in judgment.

Petitory action, any personal action at law upon contracts, or other obligations.

Pickery, the theft of small things, which is punished corporally, or by banishment.

Pipe, is a roll in the exchequer.

Pirate, a person or vessel that robs on the high seas, without any commission, or authority. The punishment is death, loss of lands, and goods.

Placitare, minor non tenetur, super hereditate paterna. A minor is not obliged to answer any process that may evict his fathers heritage.

Planting, tenants are bound to preserve the growing wood and planting on their possessions, under penaltys.

Plea, is what either party alledges for himself, in a process before a court.

Pledge, is whatever moveables are delivered to a creditor

for security of debt. It cannot be disposed of without a warrant.

Pley, is a depending action.

Ploughgoods, cannot be poinded in the time of labour, unless the debtor has no other goods.

Poinding, is the taking of a debtors moveables, by diligence for payment of the debt.

Policy, is the inclosing planting and improving land.

Policy, of insurance, a contract already noticed, under insurance.

Polygamy, a plurality of wives or husbands in the possession of one man or woman, at the same time. It is the same as bigamy, and punished as perjury.

Poor, the benefit of the poors roll, before the court of session is allowed to one who has a probable plea, and no money to defray the expence, whereby he is franked.

Poor of a parish, ought to be relieved by the heritors and kirk session.

Popular actions, may be prosecuted by any person that shall sue.

Porteousroll, the roll of the crimes and criminals, which is carried about at the circuit courts, for the trials.

Portioners, Heirs, the daughters, or sisters who succeed equally to their predecessor.

Ports and Harbours, persons having the privilege of them are bound to uphold them, and have power to exact certain dues

dues for keeping them in repair.

Pose-comitatus, the power of the county, raised upon any extraordinary occasion.

Possession, the detention of a thing, with intention to hold it as the persons own.

Possessory actions, those processes which are founded on possession of a thing, as well as the right to it.

Possessory Judgment, benefit of, is founded on seven years possession, in consequence of a seisin or tack. It secures the possessor, till his title be reduced by the court of session.

Posthumous-child, one born after the death of his father, or taken out of the body of his dead mother.

Post Office, is that where the couriers or letter-carriers, who ride by post, take up and lay down their charge. This Office has divers privileges and regulations.

Pourpessure, a wrongful encroachment upon another persons property.

Præceptio hæreditatis, is the anticipation of the inheritance by the heir, who thereby becomes liable for the debt of his predecessor.

Precarium, a thing lent gratuitously, recoverable at the lenders pleasure.

Precedent, a case determined which serves as a rule for all of the same nature.

Precept, a command in wri-

ting, sent by a judge to do a certain thing in course of law.

Precept of seisin, an order from a superior to his bailie, to invest an heir with the subject which belonged to his predecessor.

Precognition, an examination of persons, on a crime being committed, to know the circumstances, in order to a trial.

Predecessor, a person who has gone before another in the same office or employment.

Premonition, legal notice given by a debtor to a creditor to receive his money.

Prentice, or apprentice, is one bound by contract to serve another man of trade, for learning his business.

Præposita negotiis, a woman who is set over the affairs of another.

Præpositors, are persons that employ others to officiate for them in land negotiations. They are liable for the contracts of their institutors or managers.

Prerogative of the King, is whatever right and privilege he is entitled to, before and exclusive of all others.

Presbytery, a number of ministers, in the second class of presbyterian church government, who have the power of licensing, and settling ministers, and the appointing of manes and glebes.

Prescription, is the method of establishing and extinguish-

ing

ing rights, and imperfect titles, by the length of time appointed by law.

Presentation, the act of the patron of a church, in appointing a minister to that church and the benefice.

Presumption, a consequence from facts known or proved, to infer the certainty or probability of another fact. Presumptions are of three kinds, either *hominis, juris, or juris et de jure*. The first is according to the discretion of the judge. The second is, what law or custom holds to be true, till the contrary be proved. The third, of and by law, is what law presumes to be done or not, and founds itself upon, as a rule of truth.

Prevention in Jurisdiction, is a judge's right of trying a criminal, excluding other judges, by his giving him the first summons.

Price, the money given for any thing at a purchase or sale. Though it be under the half of the true value, the contract is good.

Primogeniture, the right of the first born, by which the eldest of males in the same degree excludes all the rest, in succession to heritable subjects.

Principality lands, those belonging to the Prince of Britain, or the Kings eldest son.

Principals and accessories, are all liable to punishment in crimes.

Priority, the relation of some-

thing considered as before another. And this in respect of time, nature, order, dignity, and causality.

Priority of date, is not regarded in personal rights, but that of diligence, in the most of things; but in investments, it is regarded, and regulated by their registration, excepting two or three things.

Prisoner, one who is confined in prison for a civil debt or crime.

Prisons, legal places of confinement, intended mostly for safe custody, and sometimes for punishment. Royal Boroughs are bound to have them, and to hold them sufficient.

Privateers are ships of war, fitted out by private persons at their own expence, but have commission from government.

Privilege, a benefit granted to certain persons, or orders, and places, contrary to the usual course of the law.

Privileged debt, is one to be preferred and paid before others, as house rents, servants wages, &c.

Prizes, vessels taken at sea from enemies.

Probation, proof, or evidence in general, is the legal means of convincing a judge, that the pursuer's claim or defender's is founded in fact. And this is by writing, by witnesses, or the oath of parties, &c.

Process, the proceedings in a cause from the original writ

or summons, to the end thereof.

Proclamation the King's, is a public notice given of any thing of which his majesty thinks proper to advertise his subjects

Proclamation of banns of marriage, of brieves, &c. is the solemn publication of those

Proctors or procurators, persons commissioned to manage other persons' causes before courts of law.

Prodigals, or Spendthrifts, they are put under interdiction or curatory, for management of their affairs.

Progress of writs, the proper title deeds of an estate, or heritable subject, for forty years.

Promise, is a gratuitous obligation on the promiser, without a mutual obligation, or valuable consideration.

Proof, see probation.

Property, the highest right a person has or can have to any thing.

Propinquity, the nearness of relations, as to succession, &c.

Proposed, and repelled, in defences, are those reasons that have been stated and repelled and cannot be heard again.

Prorogation of Jurisdiction, is the conferring of jurisdiction by the consent of partys, on a judge who is not otherwise competent.

Prorogation of a tack, is prolonging it to any time. It should be done before the tack expire.

Protection, is a stay of diligence for debt granted to debtors for a time, that they may appear as witnesses, &c.

Protestation, a demand by a party to be assailed, as the pursuer does not insist.

Protesting a Bill, is a demand of payment by a notary, and a declaration that diligence will go for non-payment.

Protocol, a notary public's book, in which he inserts instruments of seisin, &c.

Pro-tutor, and Pro-curator, those who act as legal tutors and curators; they are equally liable as tutors, &c.

Proving the tenor, Action of, a process before the court of session, to prove the substantial parts of a writing which is lost.

Provisio hominis tollit provisionem legis, the paction of parties takes away the provision of law in many cases.

Provision, Bonds of, are those granted to children, &c. for their portion.

Public burdens on Land, are the king's cess, feu duty, ministers stipend, &c.

Punishment, the penalty which a person incurs by the transgression of law.

Pupil, a boy or girl, not yet arrived at the age of puberty, or 14 in males, and 12 in females.

Purchase, the buying lands or goods with money, &c. and not

not succeeding to them by right of inheritance.

Purgation, oath of, is the oath administered to witnesses.

Purpresture, or Purprison, is a feudal delinquency, or an encroachment of the vassal upon the superior's lands, and inclosing them.

Purview of an act of Parliament, is the body of it, as distinguished from the preamble.

Q

Quadriennium utile, the four years after a person is twenty one years old, indulged to him to reduce any deeds granted to his hurt in his minority.

Qualified oaths, are oaths of partys containing some qualitis not referred to their oaths.

Queen, the King's wife, or widow, or a woman who holds a crown singly.

Quorum, of persons in office, those without whom business cannot be done.

R

Ranking, and sale of a debtor's estate, is a process before the court of session at the instance of heritable creditors to have the estate sold, and the price divided.

Rape, the crime of ravishing a woman, or having carnal knowledge of her by force, and against her will. It is a capital crime.

Rapine, or Robbery, is the taking away another's goods

openly and by force. It is a capital crime.

Ratification, a Wife's, is her confirming on oath, and in absence of her husband, a deed granted by her and him.

Razing, in writings, if in a substantial part, will vitiate the deed.

Real debt, is that secured by infestment on land, and it is a *debitum fundi*.

Rebel, a person denounced for a civil debt, &c. And it is the taking up arms against the King, which is a capital crime.

Recognition, a casualty, or deed of the vassal, whereby his lands are forfeited to the superior.

Recompense, payment or compensation allowed to those who manage another man's business, especially to his profit.

Recompensation, is the creditor's extinguishing a debt which is pleaded in compensation by the like debt due by the debtor.

Record, a book or register of authority, or rolls preserved in a court of record.

Recourse, on Bills of Exchange, is the right of an indorsee to return upon the indorser and drawer of a bill for payment, when the acceptor fails or refuses.

Recrimination, an accusation brought by the accused against the accuser upon the same fact.

Reddendo, a clause in a charter of land, which specifies what the vassal owes, and is to perform to the superior.

Redeemable right, a conveyance or right of security, which is not absolute, but may be redeemed.

Redemption, is the actual buying again, or entering again upon lands, &c. which have been sold or given in security, on satisfying the terms.

Redhibitoria actio, is a process for annulling the sale of insufficient goods.

Reduction of writings, is a process before the court of session, whereby writings are rescinded and annulled.

Re-examination of Witnesses. A witness may recently apply to get a mistake rectified, but he cannot afterward get himself re-examined.

Re-exchange, is the money due upon a bill protested and returned, through disappointment of payment.

Reference, by one of the parties to the other, in a debatable matter, is good.

Regalia, the rights and prerogatives of the King, such as the power of executing the laws, the power of judging of peace and war, the coinage of money, &c. Also the apparatus of a coronation, as the crown, &c.

Regiam Majestatem, an ancient book of the Scots feudal law, &c.

Register, a public book of authority, in which writings are recorded.

Registration, the inserting of writings in an authentic register.

Registry, the office, &c. where writings are recorded.

Regrator, one who buys any wares or victuals, and sells them again in the same market or fair, or within certain miles thereof.

Regress, the right of a debtor to return to his lands, &c. which were pledged for debt.

Regulations, public rules and orders to be observed in courts, in buildings, &c.

Rehabilitation, the restoring a delinquent to his former lawful condition.

Rei vindicatio, an action at law founded on the pursuer's right of property in the thing.

Relaxation from the Horn, is a form of diligence to free a debtor from the effects of denunciation for non-payment of debt.

Release, an acquittance from a debt, &c.

Relevancy, of a libel, is the sufficiency of the premises to infer the conclusion.

Relict, a Widow. She has right to the third of her husband's moveables, if there be children; and to the half if there be none; she has also right to the liferent of a third part of the lands, in the country, in which her husband died

REP

died infest, but not to houses in a borough.

Relief, a remedy at law. One has no remedy against his own deed, or prescription, &c.

Relief, a casualty due by a vassal to his superior, at entering on the estate and relieving it from the superior.

Religiosa res, are burial places, &c.

Relocation, tacit, a set of lands, supposed and inferred by a proprietor's allowing a tenant to possess on the former terms.

Remission, the pardon of a crime, or giving up the punishment due to it.

Remit, the sending back a process under advocacy, from the court of session to the inferior court.

Removing, action of, is a process to remove tenants from lands and houses, &c.

Rent, the money or other consideration for the use of lands and houses.

Rentals, are special sorts of tacks, given to ancient possessors of land, as kindly tenants and rentallers.

Renunciation, the renouncing or giving up any right or claim, as renouncing tacks, to be heir &c.

Reparation of damages &c, that which is allowed for loss and profit by delinquencies, &c.

Repealing, the revoking or

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annulling a statute of parliament, or the like.

Report, in one sense, is the reference of a cause by the lord ordinary to the whole lords, in the court of session.

Repossession of a cedent, is restoring him to his former right by deed of the assignee.

Representation, the state of one who personates or supplies the place of another, as an heir or executor, in lands and moveables.

Representative, a person in the above state. Also a member of parliament.

Reprisals, a warrant from the King to seize the goods of the subjects of a state which refuses to do justice.

Reprive, is the suspending the execution of the law, for a time.

Reprobator of witnesses, is bringing evidence of their partiality, &c. when the same is protested for at their examination.

Repudiation, the act of divorcing a husband or wife.

Requisition, a formal requiring any person, to do something, by protesting against him.

Rescue of prisoners, is setting them free from the ministers of law, or from prison, by force or fraud. It is justly punishable.

Rescission, the annulling any deed or contract.

Reservation, a liferenter by,
has

has higher powers, than a simple liferenter, as he was fiar of the land.

Reserved faculties, in a deed, may be exercised at any time, in terms of the deed.

Resettlers, receivers of stolen goods, who are as bad as the thief.

Resignation, the giving up a subject or right, in legal form, as the vassals resigning his land to the superior, or in favour of a purchaser.

Resignation, procuratory of, sometimes a deed by itself, but generally a clause in a deed, empowering one to make resignation of the subject.

Res judicata, an adjudged case, or final decree.

Resolution, one's mere resolution infers no obligation.

Resolutive clauses, those in a deed which declare the contravention thereof to annul the deed.

Respond book, is that in the chancery by which sheriffs account for non-entry duties, &c. due by vassals of the crown.

Resort last, a court from which is no appeal.

Restitution, is restoring a person to his right which was unjustly taken from him.

Retention, the right of retaining money or other things till the holder be satisfied of a debt due to him.

Retiring writings, is taking them, up on giving satisfacti-

on. Having them in custody presumes payment.

Retoured duty, signifies the extent or value of lands, returned by the inquest on a brieve, to the chancery.

Retours of services, are the answers of the inquests on brieves for serving heirs, &c. to the chancery.

Retrañtus feudalís, is the superior's option to receive an adjudger, or to undertake the debt.

Retrocession, the conveyance of a moveable subject by the assignee to the cedent.

Return, clause of, is that by which a sum of money is made to return to the granter, &c. in a certain event.

Reversion, the returning of, a right or subject lying in pledge to the owner. Or his right to demand the same.

Review, court of, that which has power to consider again, and to recal a decree.

Revocation, the act of recalling deeds done to one's prejudice. Used by minors, &c.

Revolution, the change of the King and government, which happened in the year 1688.

Right, jus, denotes property and title or claim to a thing.

Riot, the assembly of three or more persons, who commit some unlawful act with force and violence.

Robbery, a felonious taking away another man's goods from his person, presence, or estate, by

by putting him in fear. It is a capital crime.

Roll, a schedule, parchment or paper, which may be rolled up into the form of a pipe. It is of diverse sorts as rolls of parliament, of records, of causes, &c.

Roup, or Auction, a manner of sale in which one person bids after, and more than another.

Rule of Law, is a maxim inferred from several cases on the same ground of law. It is formed from the law, and not the law from the rule.

Runrigg, lands lying so in alternate ridges, may be divided; excepting borough acres.

S

Sacra res, or things sacred, are churches, communion cups, &c. which are not in commerce.

Salaries, and honoraries of lawyers and physicians, are due without paction. They are not properly hires.

Salaries or aliments, are not arrestable. A factor clearing accounts without stating salary, passes from such claim.

Sale, the transferring our property to another for a price in money. The sale of a pupil's lands must have the authority of the court of session.

Salmon-fishing, is *inter regalia*. The lieges may acquire it by prescription.

Salters and Coaliers, are the only persons like slaves in Scotland. They work at coal and salt works, and the right to them is bought and sold.

Salvage money, a reward for saving ships or goods from the danger of the sea, pirates or enemies.

Sanctuary, the same as assylum.

Satisfaction of obligations, is equal to payment.

Saturday stop, in fishing on rivers; a particular manner of fishing whereby the cruives or engine across the river, must be kept open from saturday at six at night, till monday at sun rising.

Scandal, the same with calumny, or slander, being a reproachful falsehood against any one.

Scandalum magnatum, a defamatory speech or writing, to the injury of a person of dignity.

Schools public, ought to be erected in every parish. The schoolmasters to be settled by the minister and heritors, or by the presbytery. Their salaries to be paid by the heritors, who have relief of the half from their tenants.

Sea-greens, those grounds which are frequently overflowed by the sea. They belong to the persons who have used them.

Seals, the Kings, are used in place of private parties subscriptions. They are, the great seal,

feal, privy feal, and quarter feal, for different purposes.

Sederunt act of, an ordinance of the court of session for regulating their procedure, in the expeditious administration of justice, &c.

Sedition, is the raising of commotions, or disturbances in the state, between the King and his people.

Seisin, the possession of a heritable subject obtained in legal form.

Seizure, taking possession of run goods, or the like, by force and according to law.

Sentence, the decree of a court in a cause there depending.

Separation of husband and wife, the authorized state of them living asunder, but not divorced.

Sequels, in thirlage, are the small quantities of victual given to the servants at a mill for their trouble.

Sequestration, is the deposition of a thing in controversy, into the hands of a third person, to be restored to him who is found to have the best right.

Servant, a person who engages himself to serve another for subsistence and wages. Their wages are not arrestable, and they are privileged debts on the master's executory.

Service of heirs, a jury of 15 men, finding upon oath in a court, that a man is the heir of his predecessor.

Servitude, a burden affecting lands, whereby the proprietor is restrained from the full use of his property.

Session Court of, the highest court in Scotland for civil causes. It consists of a president, and 14 other judges.

Settlement, of the poor in a parish, depends on their residence for the last three years.

Setts of Royal Boroughs, are their constitution or form of government.

Sett of ships, actions of, is a process before the admiral, to get ships sold.

Sheriff, an officer in each county, invested with judicial and ministerial power.

Shipmaster, he that has the charge and the management of a ship.

Ships, are moveable goods, but are not poindable for debt, they are arrestable, &c.

Signature, a grant from the crown, which passes the signet.

Signet, one of the King's seals, always in the custody of the secretaries of state.

Simony, the crime of buying or selling church preferment.

Simulation in rights, is any fraud used thereby.

Sist of execution, is a stop or stay of diligence, or other things given by the court of session.

Slains, letters of, an acknowledgment that the party concerned in slaughter, had received satisfaction from the slayers.

Slave, a person in the absolute power of a master. The only sort of slavery in Scotland, is seen in coliers and salters, who pass with the lands where they work.

Smugglers, those who conceal, or run prohibited goods, or goods which have not paid His Majesty's duties.

Society, a number of persons united together for their mutual assistance, security, interest or entertainment.

Socii criminis, are complices in a crime.

Sodomy, is the unnatural crime of buggery, which is punishable with death.

Soldier, a man engaged to fight. He has divers privileges in law.

Solemnitys of deeds, are those forms which are necessary to the constitution of deeds.

Solicitor, the King's, is a lawyer for managing the King's causes. He is assistant to His Majesty's advocate.

Sorners, are masterful sturdy beggars, who take meat and drink by force.

Souming and Rouming, in common pasturage, is the form of law for ascertaining the number of cattle that each proprietor may pasture upon a common moor.

Sovereign, is the King, or Supreme Magistrate in Britain.

Speaker, of the house of Commons, is a member of the house elected to act as chairman or president.

Specification, is the making of a new species or subject, from the materials of another. It is an industrial accession.

Spirituality of a benefice, is the tythes.

Spousals, are contracts of marriage.

Spoliation, or Spolie, is the intermeddling with a moveable subject violently, or without order of law. It comprehends both theft and robbery.

Staff and Batton, the symbol and form used in resignation of lands.

Stampduty on Deeds, that duty to the crown which is laid on paper and parchment for writing deeds upon.

Statutes, the same as acts of Parliament.

Steelbow goods, those effects delivered to a tenant by the landlord, for the like to be delivered back at the end of the tack.

Stellionat, a crime which includes every fraud not distinguished by a special name; particularly applied to conveyances of the same right to different persons.

Sterility, in Land, if great, affords ground for abatement of the rent.

Steward, was the magistrate over the regality lands which fell to the King by forfeiture.

Steward, Lord High, the greatest officer under the crown, who is created now occasionally only for a coronation,

the trial of a nobleman for treason, &c.

Stillicide, or cave drop, should fall upon one's own property, unless he has a servitude on his neighbour's ground.

Stipends of ministers, are the pay for their work arising from the tithes of the parishes.

Subaltern infestment, an infestment on a subfeu of land.

Subjects, the people of Britain under the dominion of the King, and owing allegiance to him.

Submission, and decreet arbitral. A submission is a contract between parties on a disputable matter, referring the same to an arbiter.

Subreption, the obtaining a favour or gift by unfair representation and surprise, which makes the gift void.

Subscription, the signing of a deed at the bottom, either by a party himself, or a notary for him, or by the parish minister in the case of a testament.

Subsidy, an aid or tax granted to the King by the parliament.

Substitute, a person appointed to officiate for another.

Substitution, is the appointing one to succeed another.

Subtack, is a tack or lease granted by the principal tackfman to a person under him.

Succession, is a person's succeeding to another, or coming

into his place as to any right or subject.

Suit, an action at law, &c.

Summons, the citation of a person to appear in court, also the warrant for this.

Sunday, Sabbath, or the Lord's day, is that day of the week set apart for divine service. No courts, or execution can proceed upon it, but contracts, bonds, or transactions may be then made, when it is necessary.

Superinduction of words, the adding of words between the lines in a deed, which goes for nothing; but if a word is superinduced in a line in a substantial part, it vitiates the deed.

Superintromission by executors, is their intermeddling with subjects not in their inventories, which holds them liable for the value.

Superior, he that has the *dominium eminens* of lands, and a duty issuing from the same, payable by the vassal.

Supersedere, is a voluntary delay granted by creditors to their debtors.

Supply, is the cess or land tax.

Support, servitude of, is a servitude in houses, whereby the servient or under tenement must be repaired to uphold and support the dominant or upper tenement.

Supportation, in going to church or market, in order to make

T A C

make a deed good, is inferred by the sick persons being supported by those about him, or not bearing up himself and acting as one in health.

Sureties, are bondsmen who give security for another. The same as cautioners.

Surgeon, one who cures by manual operation. He is answerable for damage happening through his unskilfulness.

Suspension, the stopping of the execution of a decree or other thing till the matter be heard again by a superior court.

Suspicion, Legal, against judges, is inferred by their being near relations of the parties, as brother, father, or uncle.

Swan, a large white water fowl, swans are *inter regalia*.

Sylva cædua, a wood that being cut, grows again from the roots. It may be cut by a liferenter of land.

Symbol, in delivery of possession, is a thing as a sign or representation of the matter, delivered for the real subject. As earth and stone for land, &c.

Synod, an assembly of ministers within certain bounds, being the third degree in the constitution of the church of Scotland.

T

Tacks, the same as leases. They are good against every body, if possession has followed thereon. They may be sub-

T E R

li

set, but cannot be assigned without the mention of Assignees.

Tailie or entail, the settlement of a land estate on a series of heirs, substituted one after another, under restraint with irritant and resolute clauses.

Tiend or tithe, that proportion of rents or goods due to churchmen for exercising spiritual functions. Parsonage tiends are the fifth part of the constant yearly rents, vicarage tiends, are due by use and custom only.

Temporality of benefices, is the lands belonging to the church.

Tenendas, that clause in a charter, expressing the superior of whom the land is to be held.

Tenant, one that holds lands of a landlord, for rent, &c.

Tenement, a house or other thing which a person holds of another.

Tenor, or tenour, the purport or content of a writing, &c.

Tenor, action of proving the, a process for proving a deed and the contents thereof, which has been lost.

Tenure, the manner whereby lands or tenements are held, or the service which the tenant owes to his lord.

Terce, the third part of lands, in which the proprietor dies infested, which is given to his widow in liferent.

Term, a limitation of time

or estate, as a lease for term of life or years.

Testament, the same as last will, a deed whereby a person names an executor, and bequeaths his effects to him.

Testimony, public evidence given by a witness.

Theft, a fraudulent and secret intermeddling with the property of another, with a view of making gain.

Thirlage, the obligation on some tenants to grind their corns at certain mills, and to pay the dues or the multures, sequels, and services.

Tithe, the same as teind.

Title, or name of honour, using it does not make one liable for the ancestor's debt.

Tocher, the marriage portion that comes with a wife.

Toleration, the act of, is that act of parliament in the 10th of Queen Ann, which allows dissenters from the established church, to meet and perform divine worship; but not to marry, excepting those of the episcopal communion.

Torture, or torment, judicially inflicted in trials for crimes, is abolished in Scotland.

Trade, is selling, or exchanging in commerce. It is under the particular care of Royal Boroughs.

Tradition, or Delivery, is either real, as in moveables, or symbolical as in lands, by earth and stone.

Transaction, an accommoda-

tion of a business by the parties voluntary agreement.

Transference, the passing, or conveying something to another.

Transgression, the breach of a law, or an offence against it.

Translation, a deed which conveys a subject further on, after it has been already assigned.

Transmission of penal actions, they do not pass or transmit against an heir, unless the matter has been litiscontested against the deceased.

Transumpt, action of, a process to get an authentic copy of writings which cannot be delivered up with a subject.

Treason, betraying or the crime of infidelity to one's lawful sovereign.

Treasure, as money, or the like hid in the ground belongs to the King, or those who have right from him, so do things that are lost, or derelinquished.

Treasury Lords, of the, persons in commission from the King to administer his revenues.

Trespass, any transgression of the law under treason felony, or misprision of either; or it is a wrong and damage done by one private person to another. It prescribes in three years.

Trial, the examination of a cause according to law, and before a proper judge.

Trust, a disposition of one's effects

effects to trustees for his creditors, is not good against diligence.

Truth, should be much regarded every way, in our dealings, in judicial proceedings, &c.

Turnpikes, the gates on highways set up by law, for gathering toll to make and repair the roads.

Turpitude, essential deformity in words or actions. None is obliged to swear to his own turpitude, and none should be heard when he alleges his own vileness.

Tutor or guardian, for one under 14 years if a male, or 12, if a female. Above that age he is named curator. A tutor is either named by the father, or pointed out by the law, or named by the King or his court of exchequer.

U

Udal right in Orkney and Zetland, is a right to lands in those countries, constituted alone by possession of the land as heritable proprietor, without infeftment.

Ultimus heres, the same as last heir.

Ultrionous witnesses, are those who offer themselves without being cited. They are rejected.

Union, the act of incorporating England and Scotland into one kingdom under the title of Great-Britain. This was done in the year 1707.

Union of lands, is uniting them when lying discontiguous into one tenandry; for taking seisin of them at one place, as if they were contiguous.

Unlaw, was ten pounds Scots money, which if a poor witness was not worth, of old, he was rejected. But this is now in disuse.

Unskilfulness, surgeons, and all artificers are answerable for the damage that happens thro' their unskilfulness. But lawyers and physicians are not answerable for the honest advices they give.

Usury, the crime of taking more interest than is allowed by law. Its punishment is, voiding the obligation, and forfeiting treble value of the sums or goods lent.

Uterine children, are those related only by the mother they do not succeed to one another.

V

Vacant Stipends, are those which fall due before a minister is settled. The patron has the disposal of them for pious uses within the parish. Those uses are repairing the church and manse, taking care of the poor, building and repairing bridges, &c.

Vacation, that time in which courts of law do not sit for business, as seed time and harvest, &c.

Vagrants, persons absconding

ing from diligence. Also rogues and vagabonds, or sturdy beggars, concerning whom there are divers regulations.

Valent, a clause in a retour, which is the rule for determining the old extent of lands, &c.

Valued rent, of lands, it is the valued duty of lands, and the rule for payment of the landtax and other public burdens, &c.

Vassal, is he who receives a right of lands, under certain conditions from a superior.

Vastation or waste, by public calamity, entitles the tenant to relief from his rent.

Vendition, the same as sale. Also the name of the deed which conveys a ship or share of it to a purchaser.

Verdict, is the answer of the jury to the court, upon the matter of fact committed to their examination.

Verification, the act of proving a thing.

Vicarage, the small tithes which are paid according to use and custom to the minister of the parish.

View, or proof upon view, is that sort of proof which is taken in some cases upon viewing the object or subject in dispute.

Vindicatio, or rei vindicatio, an action founded on the right of property.

Violence, any force applied to injure a person or infringe his right.

Vis et metus, the same as force.

Viscount, that degree of nobility next below a count or earl, and above a baron or lord.

Vitious intromission, an unwarrantable intermiddling with the moveable effects of a person deceased. This subjects the intermeddler to payment of the debt.

W

Wadset, is a right of lands, by which they are pledged by the proprietor or debtor to his creditor. This is perfected by seisin on the disposition. The creditor is called wadsetter, and the debtor reverser.

Wager, a bett, or pledge upon a chance. It is not in general against law.

Wage, of Servants, is the pay given for their service.

Waith, or waiff, goods wayed or lost and found, belong to the King. They ought to be proclaimed. To meddle with them clandestinely infers theft.

Wakening, summons of, takes place when a process lies over a year, without any thing done, and is thereby sleeping. It must be awakened by a new summons.

Wand of Peace, with messengers, is a small stick of authority, with which they touch a person when they apprehend him for debt, in order to make sure work.

War, is the exercise of force under

under Sovereign command. During which the civil laws are often asleep.

Ward-holding, an antient tenure of lands now abolished.

Warding, the same as imprisonment.

Warning, that legal notice which is given to tenants to remove from lands or houses, 40 days before the term.

Warrandice, or Warranty, is an engagement by the seller of a subject to secure it to the purchaser. And this is either against all men, or from the sellers own fact and deed.

Water-course, or water-gang, is a servitude or service, whereby one may convey water thro' another's land, to his own.

Watering, another servitude, or the privilege to water within another's ground.

Way, a passage or road, called the King's high way.

Weights and measures, are the standards by masses of known length and gravity, by which commerce moves and is adjusted and secured. The regulation of this is of great concern in Britain, and yet it is shamefully neglected.

Weregild, or Cro, was a consideration in money given by a manslayer to the friends of the person killed. Capital punishment succeeded to it, hence no other assythment is due.

Whitsunday, a legal term, on 15th May, for removings, payment of liferents, &c.

Widow, the relict of a deceased person. In case of no contract, she is entitled to a third of the moveables, if there be children, and to an half, if there be none. She is also entitled to the liferent of a third part of her husband's lands, if he died infested in them.

Will, or Last-will, is the declaration of a man's mind concerning his moveable effects after his death.

Witness, a person who gives evidence upon oath in a cause. He ought to be disinterested, not a near relation, nor ultroneous.

Word, or promise, is binding in everything concerning moveables. Doubtful words are interpreted against the speaker, where another is a party; but they are construed in favour of the speaker where another is not a party, as in Testaments, &c.

Wreck, or shipwreck, is when a ship perishes on the sea and no person escapes alive out of it. If a living creature be found in the ship, the owner is entitled to claim within year and day.

Writ, the King's precept to get something done in a lawsuit.

Writers, are those employed in forming securities and conveyances, &c. They should write good language, with a good hand, and durable ink.

Writers, or Clerks to the Signet,

net, are those who write and subscribe every thing that passeth ordinarily the signet.

Writing, is essential to bargains concerning heritable subjects. Every writing ought to be in the form required by law.

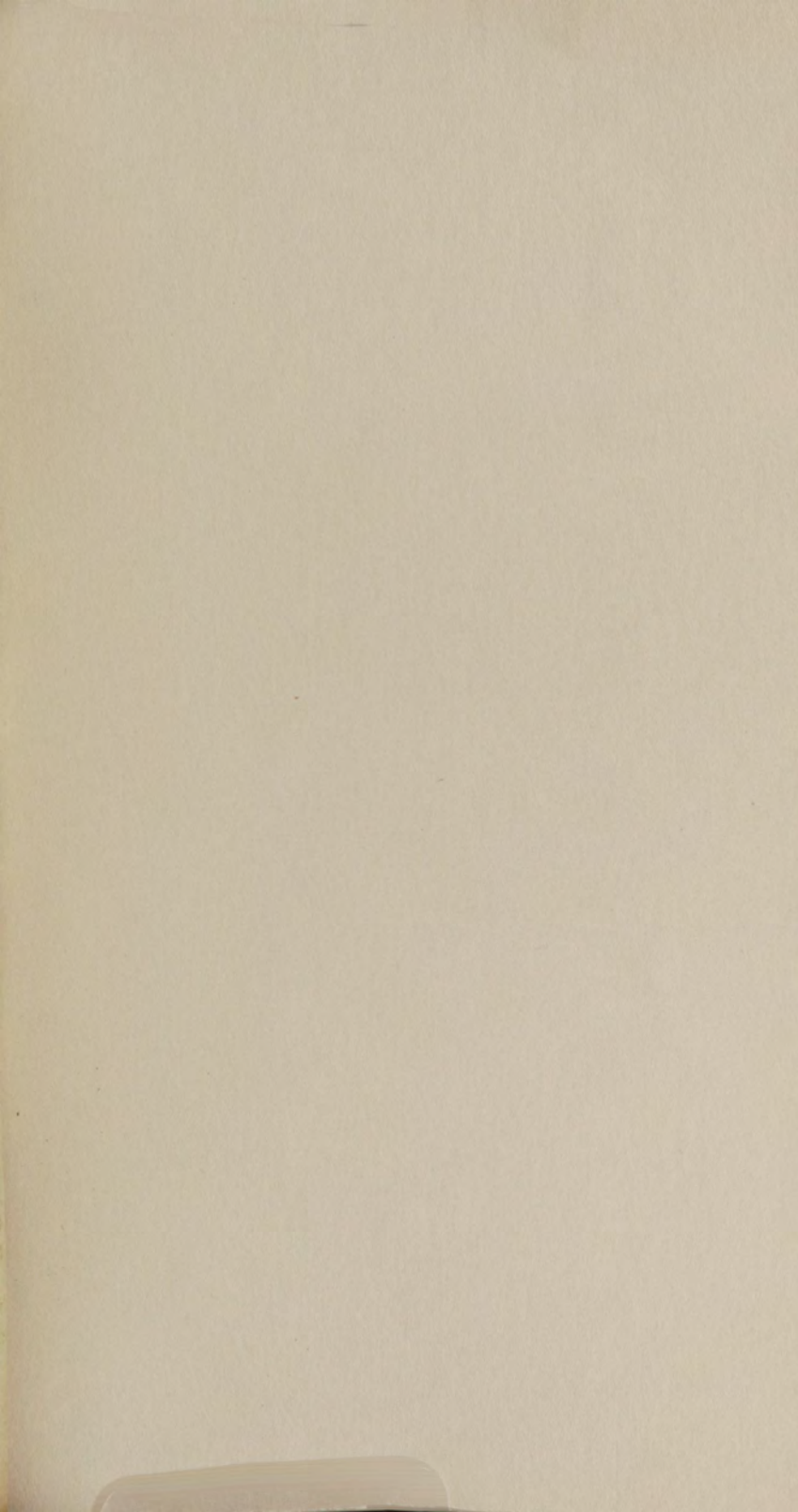
Wrongous imprisonment, is the imprisoning a person without just ground, and contrary to law, for which there are penalties enacted on several degrees of persons.

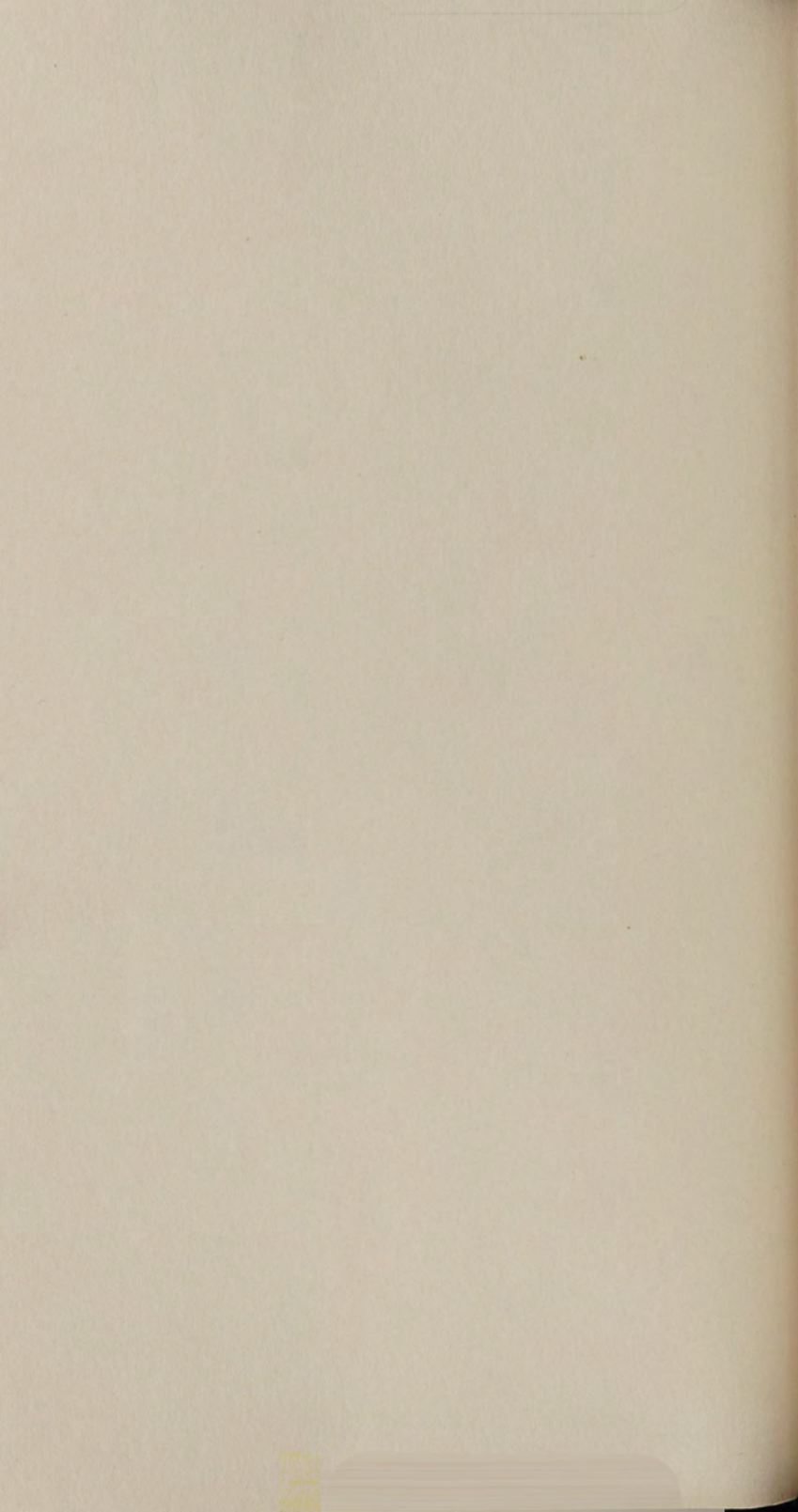
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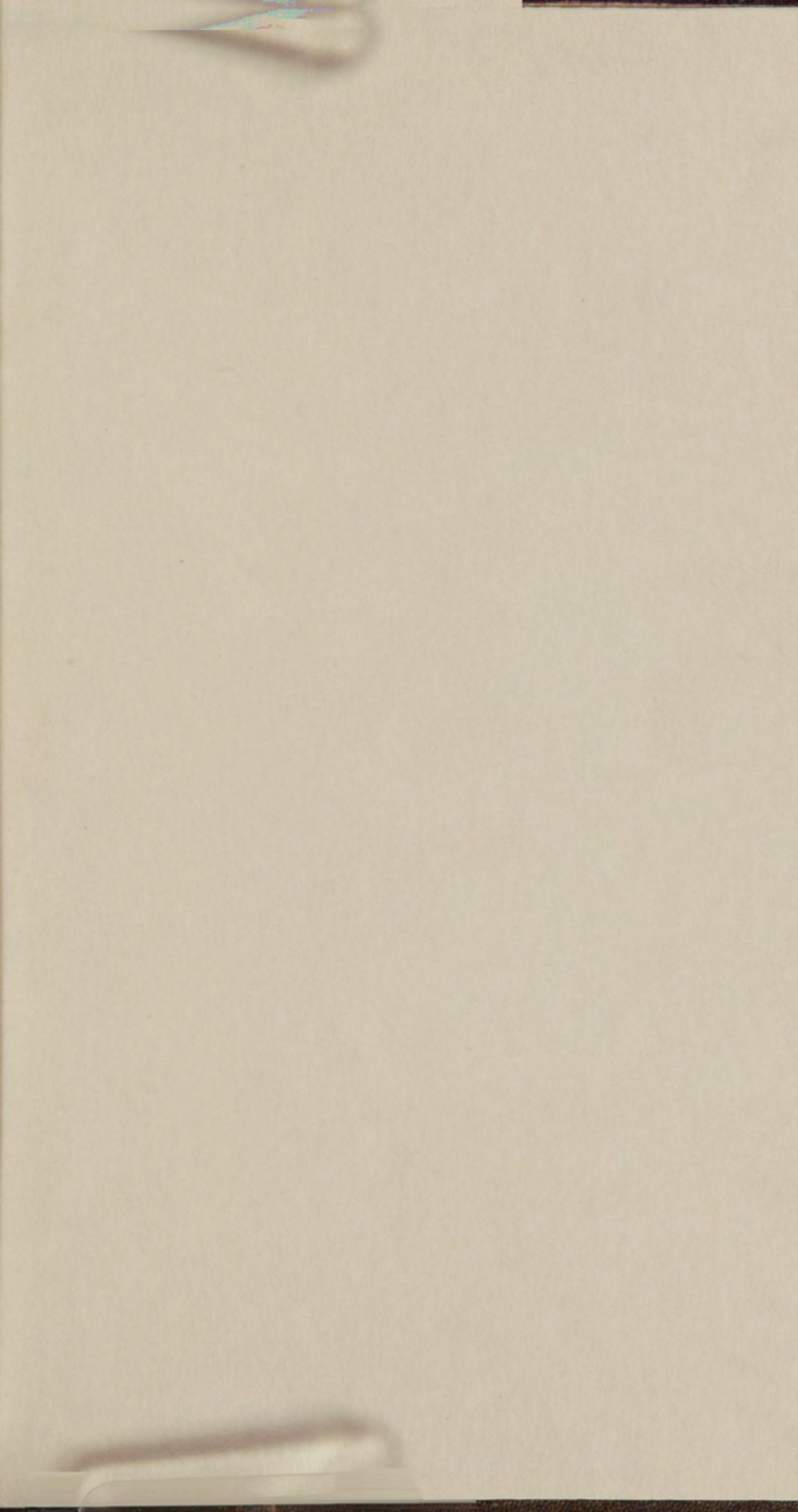
Year and day, this time is appointed for several things, for the case of a living child procreated of a marriage; for the heir of a person deliberating after his predecessor's death, whether he shall enter or not, &c.

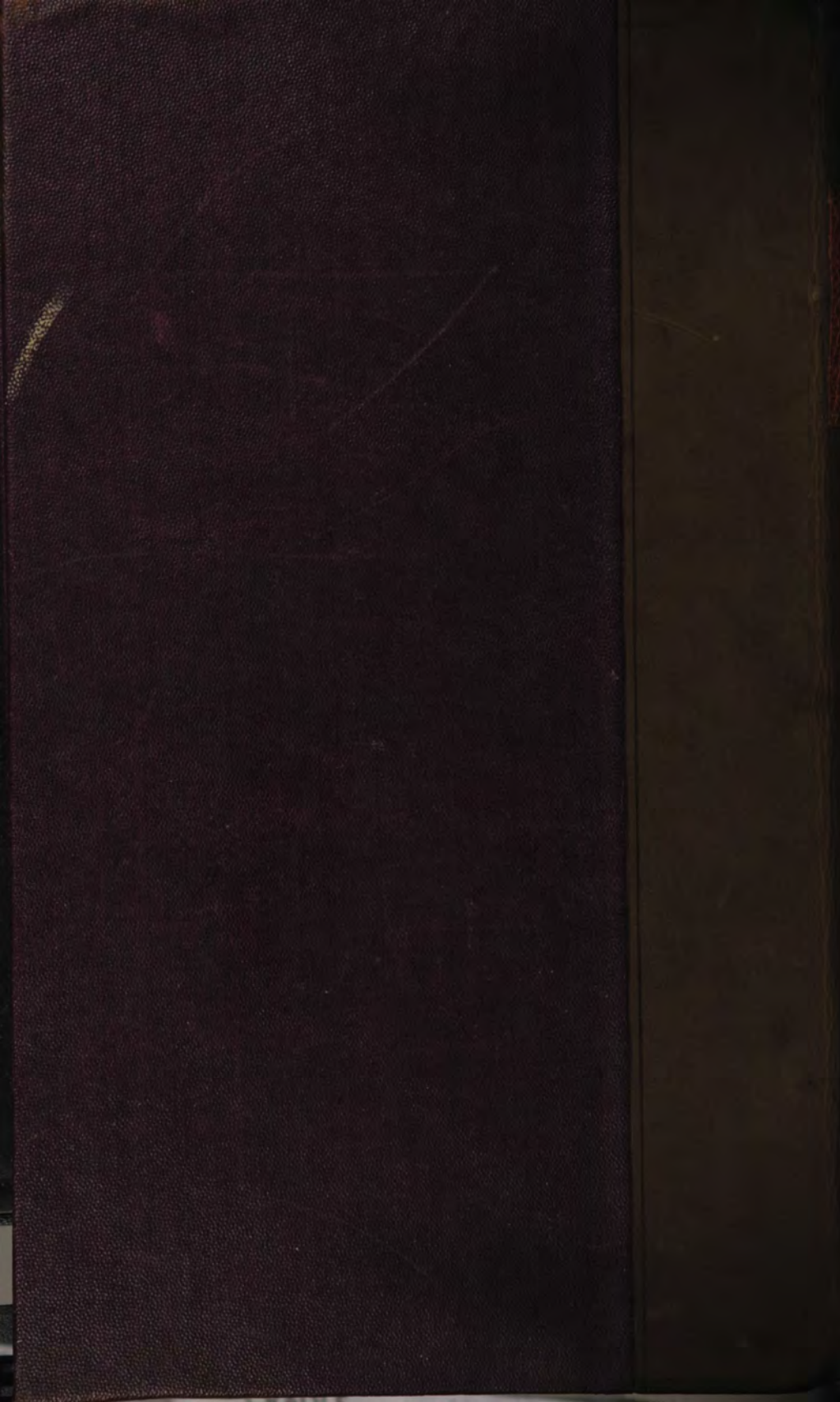
Yeomen, are the commonality.

F I N I S.









ESSAY ON
THE FORMS
OF
WRITINGS

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